Debt Advice Handbook

10th edition

Mike Wolfe
Updated by Peter Madge
with Nicola Connop, Edward Graham, John Kruse, David Malcolm
and Katherine Rock

Child Poverty Action Group
CPAG promotes action for the prevention and relief of poverty among children and families with children. To achieve this, CPAG aims to raise awareness of the causes, extent, nature and impact of poverty, and strategies for its eradication and prevention; bring about positive policy changes for families with children in poverty; and enable those eligible for income maintenance to have access to their full entitlement. If you are not already supporting us, please consider making a donation, or ask for details of our membership schemes, training courses and publications.
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Peter Madge
Citizens Advice Specialist Support

The law covered in this book was correct on 1 September 2012 and includes regulations laid up to this date.
Foreword

When I wrote the foreword for the previous edition of this Handbook two years ago, personal debt problems were at an all time high – caused by years of access to easy credit. Although, at the time of writing, debt problems still form a very high proportion of the work undertaken by advice agencies, there has been a change in the nature and causes of the debt problems seen by advice agencies over the last two years.

While it continues to be true that most people consulting a debt adviser still owe money to a variety of high street credit providers, like banks and credit card companies, we are seeing an increase in the number of people who are in debt with high-cost credit products, particularly short-term payday loans. Rising unemployment and higher prices for essentials like fuel, petrol and food has meant that more people are struggling to make ends meet, particularly with household bills and priority debts such as rent arrears, telephone, water and fuel bills and council tax arrears.

Changes and cuts to the welfare benefits system mean that the number of people in financial difficulties is growing and will continue to grow. We are now seeing the impact of those cuts that have already been implemented. Advice agencies are already seeing private tenants who are facing eviction for rent arrears because their housing benefit has been cut and people with chronic illnesses experiencing hardship and debt because their entitlement to contributory employment and support allowance is now limited to 12 months.

Further cuts in welfare spending and other government policy initiatives mean that this trend is likely to continue. Although the new universal credit system will bring some much needed simplification to the means-tested benefits system and provide better incentives to work, changes to the method and frequency of payment of this benefit will result in more people needing help to budget or deal with debts. For example, universal credit will contain help with rent for all types of tenants and this will usually be paid directly to them rather than to their landlord as is already the case for tenants of social landlords. Without support, advice and the right current account to help them budget better, many will fall behind with their rent and prioritise paying credit debts. The move to a single monthly payment of universal credit per household will also cause financial difficulties for some families who are used to budgeting their income over shorter periods.

From April 2013, localisation of council tax support combined with a cut in funding for this help is likely to result in advisers seeing more people with council
tax arrears, because most people of working age will receive less help. Many of these debts are likely to be enforced by unregulated private bailiffs, who, in our experience, often intimidate vulnerable people in debt, abuse their powers and charge fees not allowed by law. Although the government has stated that it intends to take action to curb ‘aggressive bailiffs’, these plans do not appear at present to include independent regulation of the enforcement industry, but allow bailiffs to increase their fees. Many families in severe financial difficulties could see their council tax debts grow by £300 in bailiff fees.

Other government initiatives in the pipeline will have a positive impact on the debt problems that we see. The Financial Services Bill currently going through Parliament should result in a strong, well-resourced conduct regulator, with the right powers and determination to root out unfair practices and intervene in the design of all financial services products, including consumer credit.

The provision of well-funded, high-quality, free debt advice will therefore continue to be vital to allow people to manage their debts before they spiral out of control and to cope with debt crises. Since the last Handbook was published, the free advice sector has maintained high-quality services in a time of uncertainty, cuts and increased targets. The Money Advice Service now distributes funding for debt advice raised from a levy on the financial services industry. We sincerely hope that with the advent of a secure, long-term source of funding and an enhanced remit to co-ordinate debt advice, the Money Advice Service will add significant value, helping the sector develop systems that support high quality face-to-face, telephone and online debt advice services.

This Handbook continues to be an essential resource for all those working in debt advice and will help advisers meet the challenges ahead. I congratulate the authors on another excellent publication.

Gillian Guy
Chief Executive, Citizens Advice
Contents

How to use this Handbook x
Abbreviations xii
Introduction xiii

Chapter 1  Debt advice: an outline 1
1. The adviser as a professional 1
2. The debt advice system 4
3. Administration 11

Chapter 2  Key skills 16
1. Interviewing 16
2. Negotiation 17
3. Letter writing 19
4. Court representation 22
5. Changing social policy 25
6. Dealing with harassment 29
7. Budgeting advice 33

Chapter 3  Stages of debt advice 40
1. Creating trust 40
2. Listing creditors and minimising debts 41
3. Listing and maximising income 43
4. Listing expenditure 46
5. Dealing with priority debts 49
6. Drawing up a financial statement 50
7. Choosing a strategy for non-priority debts 53
8. Implementing the chosen strategies 57

Chapter 4  The Consumer Credit Act 60
1. Introduction 60
2. Licensing traders 60
3. Regulated agreements 65

Chapter 5  Minimising debts 83
1. Introduction 83
2. Using contract law to challenge or reduce liability 84
3. Using the Consumer Credit Act to challenge or reduce liability 93
Chapter 6  Types of debt  
1. Regulated debts  107
2. Other debts  127

Chapter 7  Maximising income  
1. Introduction  161
2. How to use this chapter  163
3. A–Z of benefits and tax credits  165
4. Calculating entitlement  182
5. Other help  189

Chapter 8  Dealing with priority debts  
1. Deciding on priorities  196
2. The general approach to priority debts  199
3. Strategies for dealing with priority debts  203
4. Emergency action  227

Chapter 9  Dealing with non-priority debts  
1. Choosing a strategy  236
2. The general approach to non-priority debts  240
3. Strategies for dealing with non-priority debts  243
4. Court-based strategies  263

Chapter 10  The county court  
1. Introduction  265
2. Before starting court action  266
3. Taking court action  270
4. Court fees  273
5. Time limits  274
6. Appeals and adjournments  276

Chapter 11  The county court: money claims  
1. Starting a money claim  280
2. Admitting a money claim  285
3. The judgment.  288
4. Defending a money claim  295
5. Enforcing a judgment  298
6. Preventing enforcement  314

Chapter 12  The county court: possession of goods and property  
1. Recovering goods on hire purchase or conditional sale  323
2. Recovering property  326
3. Recovering owner-occupied property  327
4. Recovering rented property  346
5. Preventing enforcement  355
Chapter 13  The magistrates' court  360
1. Introduction  360
2. Financial penalties  361
3. Compensation orders  377
4. Council tax  378
5. Wilful refusal and culpable neglect  383

Chapter 14  Bailiffs  387
1. Types of bailiff and the seizure of goods  387
2. How bailiffs become involved  391
3. Bailiffs' powers  394
4. Powers of arrest  409
5. Complaints against bailiffs  410
6. Emergency action  415

Chapter 15  Personal insolvency  418
1. Last resort or a fresh start  418
2. Administration orders  419
3. When to use bankruptcy and individual voluntary arrangements  423
4. Individual voluntary arrangements  427
5. Bankruptcy  437
6. Debt relief orders  472

Chapter 16  Business debts  487
1. Types of small business  487
2. Stages of debt advice  489

Chapter 17  Student debt  501
1. Financial support for students: introduction  501
2. Stages of debt advice  505
3. Types of debt  511
4. Minimising debts  522
5. Maximising income  522
6. Dealing with priority debts  542

Appendices
Appendix 1  Useful organisations  547
Appendix 2  Useful publications  552
Appendix 3  Abbreviations used in the notes  555

Index  559
How to use this *Handbook*

This *Handbook* is produced:
- as a guide and training aid for the new debt adviser;
- as a reference work for those who undertake debt advice alongside other sorts of advice work or other professional disciplines – e.g., social workers and housing officers;
- for the specialist debt adviser as a first step in accessing primary legislation and regulations;
- for the manager or purchaser of debt advice services to help understand and evaluate debt advice.

The subjects covered within debt advice are vast and could fill many volumes. In this *Handbook*, much detail has been deliberately excluded in order to make it accessible to the reader and to make clear the structure of debt work.

Most relevant legislation and court forms are now available online from www.legislation.gov.uk and www.hmcourts-service.gov.uk respectively and so are not therefore included in the Appendices. The Civil Procedure Rules are available online at www.justice.gov.uk/courts/procedure-rules/civil and many judgments of the higher courts are available in the legal/professional section of www.justice.gov.uk. Most debt packages used in advice agencies include standard letters and forms, and so these are also not included in the Appendices. The common financial statement is increasingly the standard form of financial statement sent to creditors and this is available online at www.moneyadvicetrust.org together with supporting documentation.

The *Handbook* can best be used as follows.

**Training aid**

The *Introduction* and Chapters 1 to 3 are written to assist those who are interested in debt advice and outline the processes and skills involved. These should be read by new debt advisers and those who have done some of this work and would like to think more about the structure behind their practical experience. The chapters can also be used by those who commission or manage debt advice as a means of clarifying the product with which they are dealing.

The new adviser should ensure that s/he is familiar with the Consumer Credit Act 1974 (this is explained in Chapter 4) and is able to identify each type of debt (explained in Chapter 6) because this is fundamental to using the rest of the *Handbook*. Maximising income is a key part of the debt advice process and this is...
summarised in Chapter 7. The new adviser will also need to be familiar with the criteria to be used in prioritising debts (Chapter 8). S/he will find it useful to skim through the different strategies for priority and non-priority debts (Chapters 8 and 9). These can be examined in detail as they arise in the course of advising.

**The debt adviser**

Readers already familiar with the processes of debt advice may wish to use Chapter 5 (minimising debts) and the strategy selection (Chapters 8 and 9) to help them think about the best strategy for a particular debt. This might include bankruptcy or an individual voluntary arrangement (these are discussed in Chapter 15). Court procedures are covered in Chapter 10 (county court), Chapter 11 (money only claims), Chapter 12 (claims for possession of goods or land) and Chapter 13 (magistrates’ court). If the client is threatened with bailiff action, the adviser should refer to Chapter 14. Specific debts are dealt with in Chapter 16 (business debts) and Chapter 17 (student debts). The index will enable you to find detailed information on a particular strategy, type of debt or court process. References can be accessed via the endnotes contained at the end of each chapter for those readers who want more in-depth information about a particular topic. Details of other useful reference material and organisations are in the Appendices.
### Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tr>
<td>AA</td>
<td>attendance allowance</td>
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<td>AO</td>
<td>administration order</td>
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<td>APR</td>
<td>annual percentage rate</td>
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<td>BRO</td>
<td>bankruptcy restriction order</td>
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<td>BRU</td>
<td>bankruptcy restriction undertaking</td>
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<td>CA</td>
<td>carer's allowance</td>
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<td>CAB</td>
<td>Citizens Advice Bureau</td>
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<td>CFS</td>
<td>common financial statement</td>
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<td>CIVEA</td>
<td>Civil Enforcement Association</td>
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<td>CMEC</td>
<td>Child Maintenance and Enforcement Commission</td>
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<td>CSA</td>
<td>Child Support Agency</td>
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<td>CTB</td>
<td>council tax benefit</td>
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<td>CTC</td>
<td>child tax credit</td>
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<td>DLA</td>
<td>disability living allowance</td>
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<td>DRO</td>
<td>debt relief order</td>
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<td>DRRO</td>
<td>debt relief restrictions order</td>
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<tr>
<td>DRRU</td>
<td>debt relief restrictions undertaking</td>
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<tr>
<td>DVLA</td>
<td>Driver and Vehicle Licensing Agency</td>
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<td>DWP</td>
<td>Department for Work and Pensions</td>
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<td>EEA</td>
<td>European Economic Area</td>
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<td>ESA</td>
<td>employment and support allowance</td>
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<td>EU</td>
<td>European Union</td>
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<td>FOS</td>
<td>Financial Ombudsman Service</td>
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<td>FSA</td>
<td>Financial Services Authority</td>
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<td>FTVA</td>
<td>fast-track, post-bankruptcy voluntary arrangement</td>
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<td>GA</td>
<td>guardian's allowance</td>
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<td>GAP</td>
<td>guaranteed asset protection</td>
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<td>HB</td>
<td>housing benefit</td>
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<td>HE</td>
<td>higher education</td>
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<td>HMCTS</td>
<td>HM Courts and Tribunals Service</td>
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<td>HMRC</td>
<td>HM Revenue and Customs</td>
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<td>HP</td>
<td>hire purchase</td>
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<td>IB</td>
<td>incapacity benefit</td>
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<td>IMA</td>
<td>Institute of Money Advisers</td>
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<td>IS</td>
<td>income support</td>
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<td>IVA</td>
<td>individual voluntary arrangement</td>
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<td>JSA</td>
<td>jobseeker's allowance</td>
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<td>MA</td>
<td>maternity allowance</td>
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<tr>
<td>MCOB</td>
<td>Mortgages and Home Finance: conduct of business sourcebook</td>
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<td>MIG</td>
<td>mortgage indemnity guarantee</td>
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<tr>
<td>MP</td>
<td>Member of Parliament</td>
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<td>NHS</td>
<td>National Health Service</td>
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<td>NI</td>
<td>national insurance</td>
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<td>NSEA</td>
<td>National Standards for Enforcement Agents</td>
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<td>NUS</td>
<td>National Union of Students</td>
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<td>OFT</td>
<td>Office of Fair Trading</td>
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<td>PAYE</td>
<td>Pay As You Earn</td>
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<td>PC</td>
<td>pension credit</td>
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<tr>
<td>PIN</td>
<td>personal identification number</td>
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<td>PIP</td>
<td>personal independence payment</td>
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<td>RPI</td>
<td>Retail Prices Index</td>
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<td>SAP</td>
<td>statutory adoption pay</td>
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<td>SDA</td>
<td>severe disablement allowance</td>
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<td>SFE</td>
<td>Student Finance England</td>
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<td>SLP</td>
<td>Student Loans Company</td>
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<td>SMP</td>
<td>statutory maternity pay</td>
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<td>SPP</td>
<td>statutory paternity pay</td>
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<tr>
<td>SSP</td>
<td>statutory sick pay</td>
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<tr>
<td>SERPS</td>
<td>state earnings-related pension scheme</td>
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<tr>
<td>SFC</td>
<td>Student Finance Corporation</td>
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<tr>
<td>UC</td>
<td>universal credit</td>
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<td>UCAS</td>
<td>Universities and College Admissions Service</td>
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<td>VAT</td>
<td>value added tax</td>
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<td>WTC</td>
<td>working tax credit</td>
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Introduction

Debt has always been an inevitable consequence of borrowing and is recognised by the credit industry as a necessary corollary of its lending. Lenders will always make provision in their accounts for debts that are to be written off. This Handbook is based on the assumption that debt is caused by lenders who predict it, but lend nonetheless.

While the causes of debt may not be individual, the effects are: bailiffs, disconnections, repossessions and imprisonment. Money worries are a significant cause of relationship problems, depression, anxiety and stress, with many of those in debt receiving treatment from their GP.

Mental health problems are both a cause and effect of debt and so it is good to see that the money advice sector and the credit industry are continuing to work together under the auspices of the Money Advice Liaison Group to produce good practice guidelines for dealing with this particular situation.

Although the number of personal insolvencies has fallen substantially from its 2010 peak of just over 135,000 and unemployment is falling, increasing numbers of people are seeking debt advice. The number of debt relief orders continues to rise year on year (and, according to the Insolvency Service) are now comparable to the number of bankruptcies for the first time. Most people have seen a drop in their real disposable incomes due to a combination of factors and many more people are having to work part time in order to stay in employment.

The number of people struggling with unmanageable debt seems likely to remain high for the foreseeable future and may even increase further, given that we have yet to feel the full impact of the government’s welfare ‘reforms’.

What is debt advice

Debt advice may be defined by the Financial Inclusion Taskforce as ‘problem-solving advice relating to debts that individuals are unable to afford to repay. This can take the form of general advice on debt problems, including the provision of self-help materials, or can involve detailed and individualised assistance, including casework support for clients with complex debt problems.’

Debt advice is one component of what is now called money advice. Money advice also comprises financial literacy (the ability to understand finance), financial capability (the skills, knowledge and understanding to manage money) and money guidance (helping someone manage her/his money better). Virtually
everyone has debts. But, when debt becomes unmanageable, the need for debt advice arises.

Debt advice should be distinguished from ‘money management’ and ‘financial capability’. On the other hand, debt advice should not reinforce financial exclusion; it should seek to promote financial inclusion. Debt advice does include a comprehensive check of a person’s entitlement to state benefits, but it goes much further than welfare rights. Debt advice is, essentially, crisis management, and the other components can hopefully prevent the need for debt advice recurring or even occurring in the first place. An ideal money advice model integrates all the various components.

In the past, the words ‘debt counselling’ and ‘money advice’ have been used almost interchangeably to describe what we shall call ‘debt advice’. We prefer this term to ‘money advice’ because of the issues discussed above. ‘Debt counselling’, on the other hand, can appear to suggest that debt is a problem about which individuals merely need counselling. Counselling may sometimes be important in the early stages of debt advice, but is not a substitute for the work of the debt adviser. Debt advice is not just about making offers (token or otherwise) to the client’s creditors. The processes described in this Handbook are not set in stone and advisers should not be afraid to step outside them in order to help their clients. Advisers should not assume that creditors and courts always get it right, but should examine their practices and their paperwork to protect their clients from inappropriate enforcement action.
Chapter 1

Debt advice: an outline

This chapter covers:
1. The adviser as a professional (below)
2. The debt advice system (p4)
3. Administration (p11)

1. The adviser as a professional

Debt advice is a series of tools and professional strategies that can be used to help clients with financial difficulties. Debt advice provides help to clients by:

- enabling them to maximise their income;
- explaining the implications of non-payment of each of their debts and, on this basis, deciding which are priorities;
- establishing whether or not they are liable for their debts and assisting them to challenge their creditors if appropriate;
- assisting them to plan their budgets;
- helping them choose a strategy (usually to reduce or stop payments) that will minimise the effects of their debt on their financial, social or medical wellbeing by giving them impartial, independent and confidential advice to enable them to make an informed choice about the options available;
- preserving their home, fuel supplies and liberty;
- assisting by advice or representation with the implementation of whatever strategy is chosen.

Debt advice is a professional activity. There is a package of attitudes, skills and strategies that are part of any debt advice service. This guarantees consistency and quality assurance. Users of such services are misled if anything less than this package is offered.

Debt advice can be provided by specialists or by professionals whose job primarily involves other activities – eg, housing officers and social workers. It can be provided by paid or voluntary workers. Recent years have seen the growth of debt management companies. These charge clients a fee for setting up and handling debt repayment programmes.
Chapter 1: Debt advice: an outline

1. The adviser as a professional

A professional debt adviser needs a mixture of skills, knowledge and attitudes, which together form the basis of good practice. For many years there was no qualification that recognised the profession of money advice or acknowledged the wide range of skills and knowledge that money advisers have. However, the Institute of Money Advisers (IMA) (the professional association for full-time, part-time or volunteer/trainee debt advisers in England, Wales and Northern Ireland who deliver or promote free, confidential, impartial and independent debt advice services) in partnership with Staffordshire University has introduced a Certificate in Money Advice Practice. Worth 15 higher education credits and broadly equivalent to an NVQ level 4, this award is offered to IMA members with at least 12 months’ full-time (or part-time equivalent) experience in debt advice casework or a related activity. The award is gained by studying a combination of skills and knowledge based on the national occupational standards for legal advice. The course is delivered online and involves a number of modules, each ending with a formative assessment, and finally an examination, which is sat online.

The award is supported by a ‘continuing professional development’ requirement to ensure advisers keep their skills and knowledge up to date.

The provision of debt advice as discussed in this Handbook generally requires the adviser (or her/his employer) to have a consumer credit licence from the Office of Fair Trading (OFT) (see p60), unless s/he is in an organisation with a group licence, such as Citizens Advice or Advice UK. In December 2001, the OFT issued guidance on the minimum standards of service that debt management companies should provide, but made it clear that its principles applied equally to the free advice sector. In March 2012, the OFT issued revised and updated guidance, Debt Management (and Credit Repair Services) Guidance. This mainly underlines what should be good practice and will be referred to in this Handbook where relevant.

An unambiguous role

In any situation where money is owed, there are two parties whose interests may conflict. Both have a range of legal remedies and defences, and well-established professionals know that they cannot advise both parties in such a situation. A debt adviser, similarly, needs to be clear that s/he is working only for the interests of the client. This is true even if the adviser’s employment is funded by the finance industry or other creditors, such as a local authority, or if s/he works for an organisation that seeks to be impartial.

The OFT guidance makes it clear that all advice given and any action taken must have regard to the best interests of the client and be accurate, sufficiently clear and appropriate to her/his individual circumstances taking into account:
• the client’s financial position;
• her/his personal circumstances, including the reasons for her/his financial difficulty and whether they are temporary or long term; and
Chapter 1: Debt advice: an outline

1. The adviser as a professional

- any other relevant factors, which should include the powers of the creditor and whether interest or other charges have been frozen.

**A professional attitude**

A debt adviser should be aware of experiences in her/his own past which may give her/him judgemental attitudes towards clients and/or creditors. Debt advisers must consciously rid themselves of any personal bias and adopt a professional approach to the work.

A professional adviser must also offer a high quality, accessible service to all groups in society and should work towards understanding that debt can affect clients from different social groups in different ways.

**A commitment to social policy**

A professional debt adviser should not allow the same problem to affect adversely the lives of countless users, but will make known the lessons which can be learnt from her/his work to as wide an audience of policy makers as possible.

**A sound knowledge of law and procedures**

A professional debt adviser should be knowledgeable and imaginative about the ways in which the law can be applied to mitigate the effects of debt. S/he should be able to offer and explain each of these to any user.

**A commitment to developing the service**

A professional debt adviser should take regular opportunities to enhance her/his own skills through training, research and education, and should participate in offering this to others, so that the practice of debt advice continues to be refined and developed.

Advisers should subscribe to periodicals such as the *Adviser* and *Quarterly Account* (see Appendix 2) to keep up to date with developments in debt advice law and practice. Advisers should also subscribe to free newsletters such as *Arian*, not only to keep up to date but also to be aware of creditors’ contact details and their latest policies on arrears management and collection. Advisers should try to attend their local money advice group (details can be found in *Arian*), which will usually have updating and information exchange sessions, as well as presentations by creditors or representatives from other relevant organisations.

**A systematic approach**

A professional debt adviser should apply a single systematic approach to each individual client. However, the adviser also has a duty to ensure that any advice given is:

- in the best interests of that particular client;
Chapter 1: Debt advice: an outline

2. The debt advice system

- appropriate to her/his individual circumstances;
- realistic; and
- where an offer of payment is made, sustainable and based on a true and accurate assessment of the client’s circumstances.

An ability to involve the client in informed choices

A professional adviser should always try to involve the client, ensuring that s/he understands the implications of her/his situation and the steps the adviser proposes be taken. The adviser assists the client to make informed choices by giving her/him all her/his options and explaining their consequences before anything is done. An adviser should never assume that a client is seeking a particular outcome, but should establish what s/he wants while recognising that it may not necessarily be realistic or achievable in the particular circumstances. The adviser should also manage the client’s expectations of the adviser and agency.

Many advisers tend to put pressure on themselves to solve their clients’ problems, and client expectations can add to this. While advisers should always do the best they can for their clients, there will be times when the options are limited because matters have simply gone too far and the adviser cannot make the problem go away. Advisers should not feel that they have somehow ‘failed’ the client as they are likely to need supporting through the situation.

Also, many debt cases involve very distressing facts, and advisers need to feel that they can share and discuss these sorts of issues with colleagues and supervisors/managers.

2. The debt advice system

The debt advice system is a structured set of procedures and activities that must be worked through if a debt adviser is to provide the best possible service to someone with a multiple debt problem. It is designed to:

- maintain the client’s home, liberty and essential goods and services;
- advise the client about her/his rights and responsibilities and also the rights of her/his creditors;
- give the client the information s/he needs to make informed choices in dealing with the debt situation;
- treat all creditors equally;
- empower the client, where possible.

A systematic approach is essential because of:

- the large amount of information and paperwork generated by most debt enquiries;

...
Chapter 1: Debt advice: an outline

2. The debt advice system

- the need to avoid overlooking a particular strategy;
- the need to keep detailed records of the agency’s work – both to ensure effective advice and to enable case material to be used for evaluating the service, quality of advice assessments, and for social policy development;
- the need to train new workers in a clearly defined set of skills and knowledge;
- the need to guarantee consistency in spite of the diversity of clients using the service;
- the need to protect the adviser from the strain of having continually to ‘reinvent the wheel’.

There is more to debt advice than mere administration. A system should not be seen as a straitjacket, and it does not prevent the need for individuals to operate in a creative and flexible way in the best interests of the individual client. Different agencies will need to develop their own systems based on demand and resources, and any reporting requirements of funders.

A debt adviser needs to perform a wide range of tasks in order to provide effective help to clients. This section provides a list of these tasks, in the order in which they should be performed. In practice, a number of these tasks can be performed alongside each other – eg, maximising income while waiting for information needed to check the client’s liability for her/his debts. If the adviser is going to contact third parties on the client’s behalf, the client will need to provide a signed authority for this to happen (most agencies have a standard form of client authority).

Essentially, there are three stages to the debt advice process:
- exploration;
- options;
- action.

These can, in turn, be broken down into the following steps.
- **Step one: explore the debt problem.** This involves establishing the extent of the client’s debts, and the reason(s) for her/his financial difficulties and whether these are temporary or long term. This includes finding out who the client’s creditors are, how much is owed to each one and the action each creditor has taken to collect its debt (which may have involved passing the debt to a firm of debt collectors or even selling the debt to a debt purchaser, in which case it is necessary to see what action the collector/purchaser has taken²). In this *Handbook*, the word ‘creditor’ includes not only the original creditor but also, if the debt has been sold, the debt purchaser (unless stated otherwise).
- **Step two: deal with emergencies.** Emergencies, such as bailiffs’ warrants, threats of disconnection of fuel supply or loss of the client’s home or liberty, are dealt with first. Where court action is involved, the adviser can help the client to complete court forms.

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² Assuming any such debts are recommended for a change in use of funds.
Chapter 1: Debt advice: an outline

2. The debt advice system

● Step three: check that a client is liable for each of her/his debts. This may require further information from the client, the creditor or a third party before this can be established. Specialist advice may also be required.

● Step four: explore all possible ways of increasing a client’s income, particularly by checking that s/he is receiving all the benefits to which s/he is entitled. Some clients may be receiving benefits to which they are not entitled. The implications of this need to be discussed in full, along with the effect this may have on the client’s financial statement.

● Step five: draw up a financial statement showing what income a client is receiving, her/his essential expenditure and whether there is any income available to make payments to creditors. The financial statement is an essential tool, not only in negotiations with creditors but also in determining which options are appropriate for the client – eg, her/his eligibility for a debt relief order (see p472) or a debt management plan. There may be instances in which a client’s expenditure needs to be challenged. Should this be the case, the adviser must discuss the reasons for this – eg, that it is unlikely to be accepted by a court or creditor.

● Step six: explore and discuss all available options that are suitable in the client’s individual circumstances for resolving the debt problem. A strategy (or strategies) should then be agreed with her/him and an action plan drawn up. For each option, the adviser must clearly explain:
  – the advantages/disadvantages;
  – any eligibility criteria;
  – the debts included in that option;
  – any costs involved;
  – the risks associated with that option.

The adviser should also explain why these options are considered suitable and why other options are not considered suitable or viable. Options fall into two categories:
  – arrangements made directly with the client’s creditors; and
  – formal insolvency options.

● Step seven: negotiate with priority creditors – ie, creditors whose sanctions for non-payment include imprisonment, disconnection of essential services or loss of essential goods or the home. Usually, some form of payment will be required to deal with such debts, unless a formal insolvency option is the agreed strategy and the debt can be included in that option.

● Step eight: negotiate with the remaining creditors (known as non-priority creditors) with a view to persuading them to accept the agreed strategy. Some clients can and want to negotiate with their creditors directly. This approach enables clients to regain control of their finances and allows the advice agency to offer greater support to those clients who cannot deal with these matters themselves. Such self-help clients are likely to benefit from the CASHflow process discussed on p18.
• **Step nine: implement the action plan.** This may involve representing the client at a court hearing, periodic reviews of the client’s options/strategy, referral to another agency (eg, for a debt management plan) or arranging for the client to have a session with a money adviser (previously known as money guidance) or financial capability session. Sometimes the adviser may have to challenge creditors on whether they are entitled to recover what they are claiming from clients – eg, if clients are not liable for their debts.

**Information to clients**

It is not necessary for an agency to have any written agreement with the client, but the adviser should provide:

- adequate written information about the nature of the service being offered in plain language;
- warnings:
  - that creditors need not accept offers or stop interest or other charges;
  - that creditors may still continue to try to collect their debt and such action could incur additional costs, which will be added to the debt;
  - that the client’s credit rating could be adversely affected;
  - about the importance of meeting priority commitments;
  - that correspondence from creditors should not be ignored;
  - about the implication of court action;
  - about the possible consequences of missing prearranged appointments with her/his adviser.

If the agency uses a form of written agreement, it should:

- be clear and written in plain, intelligible language;
- set out the nature of the service to be provided by the agency, together with the amount to be repaid or an estimate (ie, the total amount the client is to pay under the strategy chosen to deal with her/his debts), although it may not be possible to provide this information to the client until later in the process, if at all;
- make clear that:
  - clients are not prohibited from corresponding or communicating with creditors;
  - the agency will deal appropriately and promptly with any correspondence it receives;
  - the agency will keep the client informed of the progress of her/his case, including sending her/him copies of correspondence sent to, and received from, creditors.

It is good practice for the adviser at the first interview to point out also:

- the agency’s commitment to confidentiality;
Chapter 1: Debt advice: an outline

2. The debt advice system

- the steps the agency will take and the steps the client has agreed to, or is expected to, take her/himself;
- that the client should not incur any further commitments without prior discussion with the adviser;
- that the client should inform the agency of any change in her/his financial circumstances;
- that a successful outcome cannot be guaranteed.

Monitoring creditor practices

The effectiveness of pressure for change often depends on the ability of an agency to produce evidence in support of its recommendations. For this reason, case recording must not just be accurate and detailed, but must also be stored in a form that allows details of particular practices and the hardship they cause to be retrieved and patterns detected. In July 2003, the Office of Fair Trading (OFT) issued guidance to the credit industry on what it regards as unfair debt collection practices (see p30). An updated version was issued in October 2011. Debt advisers should, therefore, keep a record of the collection techniques and tactics favoured by individual creditors. This will be useful in the future choice of strategy. In addition, they should note practices or situations that continually cause hardship to clients and should monitor which creditors are responsible for such situations for use in their social policy work.

There are frequent changes in the law and procedures that affect debt and agencies are often in a very good position to look closely at how these are working in practice. Agencies often carry out such exercises as part of a network of local and national debt services.

Credit reference agencies

There is no right to credit and most lenders decide credit applications on the basis of ‘credit scoring’ – i.e., a system used to assess the probability of applicants meeting their financial commitments, using information supplied on the credit application form, the lender’s own records (where available) and data from credit reference agencies. Different lenders use different systems, which should not only establish the likelihood of the applicant repaying but also whether s/he can afford to do so.

Credit reference agencies provide factual information about clients and their credit records. They do not:
- make the decision or express any opinion about whether clients should be granted credit and are unable to tell clients why they have been refused credit; or
- keep ‘blacklists’ or details of clients’ credit scores.

Credit reference agencies usually keep details of:
- electoral roll entries;
Chapter 1: Debt advice: an outline

2. The debt advice system

- county court judgments (these are held for six years from the date of judgment unless paid within one month, when any record is removed);
- bankruptcy orders, administration orders, debt relief orders and individual voluntary arrangements (these are held for six years from the date of the order/arrangement);
- credit accounts (a record is held until the account is paid off and then for a further six years);
- whether the client has defaulted on the credit agreement (a record is held for six years from the date the default was registered, normally when the account is three to six months in arrears);
- mortgage repossessions, including voluntary repossessions (these are held for six years);
- aliases, associations and linked addresses – ie, any other names the client has been known by, previous addresses or correspondence addresses, and whether the client shares financial responsibility for an account with another person;
- a warning from the Fraud Prevention Service (known as CIFAS). This is a fraud avoidance system developed to protect people whose names, addresses or other details have been used fraudulently by other people in order to apply for or obtain credit. It does not mean that the client is being accused of fraud, but any credit applications may be checked out to ensure s/he is, in fact, the applicant;
- information from the Gone Away Information Network (known as GAIN) – ie, on clients who have ‘gone away’ without informing their lenders of a forwarding address (this information is held for six years);
- previous credit searches by lenders in the past two years. Several searches within a short period of time may indicate attempted fraud or over-commitment.

From October 2004, a client’s credit file should only hold information about her/him and any other person with whom s/he has a ‘financial association’ – ie, joint account holders or applicants, or people who inform the agency they have financial ties. Associations allow lenders to take account of information about anyone ‘linked’ to the client. Although the client can ‘opt out’ (ie, ask a lender only to take account of information about her/him), this does not prevent the lender carrying out checks to make sure that this is not merely intended to hide a partner’s poor credit rating. If there is no financial association, the client should inform the agency so the link can be removed.

Guidelines from the Information Commissioner state that an account should not be recorded as in default unless the relationship between the creditor and the client has ‘broken down’ (ie, the client has been in arrears for at least three consecutive months on the contractual instalments or under an agreement to reschedule repayments), but should be recorded as in default if such payments have not been made in full for six months. Accounts which are subject to
repayment arrangements or debt management plans should only be recorded as ‘defaults’ if the client:
● is only making token payments (see below); or
● defaults on the arrangement and the arrears are equivalent to three months’ payments under the original contract; or
● is making reduced payments, but no agreed arrangement is in place.

A client who is making token or reduced payments can file a ‘notice of correction’ to record this fact if an arrangement to pay has not been recorded by the lender.

A zero balance on a credit reference report marked ‘balance satisfied’ (with or without the flag ‘partially satisfied’) indicates that there has been a default, but that:
● the account has been paid in full; or
● the account was included in an individual voluntary arrangement which has been satisfactorily completed or in a bankruptcy from which the client has been discharged (see Chapter 15); or
● the creditor has agreed to accept less than the full amount due in full and final settlement of the account.

A client who has been refused credit should be informed whether or not the lender used a credit reference agency and details of the agency should be provided on request. Since 1 February 2011, when a creditor informs a client that it is rejecting a credit application and that rejection is based on information obtained from a credit reference agency, the creditor must inform the client of this fact and provide details of the credit reference agency, including the name, address and telephone number. Failure to do so is a criminal offence. Note: this requirement does not apply to agreements secured on land.5

A client has the right to obtain a copy of her/his file at any time by sending details of her/his full name and address (including any previous addresses in the past six years), together with a fee of £2 to the credit reference agency concerned.6 Advice agencies can obtain free reports for their clients. A client can also obtain a copy of her/his report online (for £2).

If the client considers that any of the information on the file is wrong and that s/he is likely to be prejudiced as a result, s/he can write either to the lender or the credit reference agency. However, as the credit reference agency would have to contact the lender to ask it to investigate the complaint, it might be quicker to write to the lender and send a copy to the credit reference agency. The client should write to the lender and credit reference agency stating why the information is wrong and submitting any supporting evidence – eg, that a debt has been paid. In the case of credit reference agencies, the agency must respond in writing within 28 days, stating either that it has corrected or removed the information, or done nothing.7 In the meantime, the information is marked ‘account query’ while the agency checks its accuracy. If the agency fails to remove the information or the
3. Administration

Good administrative systems and time management are essential in order to manage the debt advice process in an efficient way and to meet the client’s needs appropriately.

Triage interview

Many agencies use preliminary or diagnostic interviews that do not involve the provision of advice but are time-limited, fact-finding interviews designed to identify:

- what service the client needs;
- any action that needs to be taken straight away; and
- the next steps, which might be:
  - the provision of information; or
  - signposting or referring the client to another agency; or
  - arranging for the client to receive further advice, either immediately or by appointment.

A triage interview uses specific set questions to ensure that all relevant details have been collected. Triage is often the client’s first contact with the agency. It is therefore important that it is accurate so that s/he can be dealt with appropriately.

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client does not agree with the proposed amendment, s/he can ask the agency to add her/his own ‘notice of correction’ to the file – eg, an explanation of how the debt arose. This must be no more than 200 words long and must be sent to the agency within a further 28 days. The agency must inform the client within 28 days if it accepts the notice. If it does not, the agency must refer the case to the Information Commissioner for a ruling.

If, after writing to the lender and/or the credit reference agency, the client receives no response, s/he can complain to the Information Commissioner. A client can also complain to the Information Commissioner if s/he believes inaccurate information is being held but a ‘notice of correction’ is not appropriate – eg, it needs to be completely removed. If the information about the client’s credit history is factually correct, however, it will not be removed just because s/he does not want it made public. Credit repair companies who claim to be able to ‘clean up’ people’s credit reference files (in return for a fee) should be avoided, as the information they give may be misleading or worse.8

The Information Commissioner can be contacted at Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF or at www.ico.gov.uk. The Information Commissioner’s Office produces a useful leaflet, Credit Explained, available at www.ico.gov.uk/for_the_public/topic_specific_guides/credit.aspx.
Chapter 1: Debt advice: an outline

3. Administration

Clients who are assessed as able to help themselves can be provided with the information to enable them to do so. A client can also be referred to other agencies if these are better placed to meet her/his needs.

Appropriate referrals

It is important to establish whether a case should be referred to a specialist or more experienced adviser, and if there is a mechanism in place for referring cases, if appropriate, to other organisations.

Key dates (eg, court hearings) and time limits should be recorded so they are not missed and adequate preparation can be made. It may be appropriate to keep a record of referrals to track the outcome.

Once a case is opened, a record should be made of the case and the client’s name and address to ensure the file can be accessed in the future should the client return after the case is closed.

In some situations, the adviser may do no work for the client but instead signpost her/him to a more appropriate organisation.

Files and cases

All documents relating to a case must be kept in an adequate file. All the papers should be kept in date order. Incoming letters could be stored on one side of the file and outgoing on the other. There could also be dividers to separate each different creditor, so it is easy to access each debt and monitor its progress. Alternatively, papers relating to each creditor could be kept together with a separate sheet on file to indicate the action on each debt.

Correspondence

The client should be kept informed of each stage of the case and given copies of correspondence from the creditor. Telephone conversations should be recorded on the file and names kept of the person spoken to and the date. It is good practice to follow up the call with a letter from either the adviser or creditor, as appropriate, to confirm information discussed if it is relevant to the case. A financial statement should be prepared to give a clearer picture of the client’s circumstances and whether s/he is in a position to present offers and at what rate (see p50).

Reviews

Each case should be regularly reviewed to check that replies have been received, that preparation for any court hearings has been carried out, and what the next step in the case should be. The use of a brought-forward diary system may be useful to ensure that important dates are noted and follow-ups are done regularly. There is no point keeping a file open if there is no further work to be carried out, or if the client has ceased contact and the adviser is carrying out work for the client without any confirmation that s/he is maintaining payments as agreed.
Chapter 1: Debt advice: an outline

3. Administration

By managing the caseload, advisers will also have a clearer idea of how many additional cases, if any, they can take on.

Cases should also be reviewed, if possible, by other workers to check that the advice given is appropriate and correct.

Closure

At the outset, the adviser should give the client an indication of how long the case will remain open. This gives the adviser an idea of how many cases s/he is dealing with and when s/he will be able to take on additional ones. As the adviser is trying to empower the client, the aim should be that, once the work is done on the case, clients can continue with the work themselves, but possibly with the option of returning in the future should they feel unable to deal with matters themselves or if there is a change of circumstance.

A case can be closed if:

- the strategy for the client is up and running successfully; or
- the adviser has lost contact with the client; or
- the client no longer wants help from the agency or is changing adviser; or
- the agency is no longer able to provide a service to the client.

The Institute of Money Advisers’ Money Advice Statement of Good Practice says that a creditor should only be informed that a case has been closed if:

- the adviser has been unable to obtain instructions from the client; or
- the client has informed the adviser that s/he is now dealing with the creditor in person.

This is to address the problem of a case being closed because a payment arrangement has been set up and the creditor then contacts the client directly to try to persuade her/him to increase payments. If a creditor contacts an agency again in those circumstances, it should be informed the case has been closed and be referred directly to the client.

If clients return for help when creditors are asking for a review of the finances, it may be advisable to assist them with a new financial statement and then advise how to prepare an offer letter, with the intention that they act for themselves.

Clients should be warned that some funders have time limits on when cases can be reopened on the same issue. This can be problematic if a client fails to keep in contact, the case is closed and the client then returns.

Client contact

As much information as possible on all the debts should be gained at the first interview and this should be recorded in a clear and concise manner. In practice, many clients do not bring all the information required to the adviser at the outset and so much of it may have to be obtained later, possibly from other sources – eg,
from a client’s creditors for outstanding balances or credit reference agencies for details of the client’s creditors. If the first interview is being conducted by telephone, information will have to be brought or sent to the advice agency subsequently (and a signed authority to act obtained before creditors can be contacted).

It is vital to obtain sufficient information at the earliest opportunity, as otherwise:

- income/expenditure details and, consequently, the financial statement may be inaccurate and payment offers unsustainable, leading to the client failing to maintain the arrangement;
- incorrect advice may be given, leading the client to choose one option when another option might have been more appropriate;
- opportunities to maximise income may be lost.

A pro forma could be used to record the information, which could also remind the adviser what to ask the client in order to establish the full facts of the case. Debt clients are known to reveal only debts that they are worried about. It is therefore important that the adviser goes through all the priority commitments, whether or not they are in arrears, and then moves on to the non-priority commitments. Advice could be given in each area on the consequences should the client default. The adviser should be realistic about the outcome and be honest with the client at all times.

The adviser should check that agreements have been drawn up correctly and consider any applicable time limits.

It is a good idea to have standard letters held electronically to cut and paste the relevant facts of each individual case. The first letter after the interview should confirm all the advice given, setting out the creditors’ powers and the client’s options and consequences. The agreed action and the expected time scale should also be outlined.

The adviser should keep clients informed and involved at each stage, with the intention that they will be able to deal with the case themselves once the case is closed. The client should also keep the adviser informed of any change in circumstances throughout the life of the case.

Once all the work is completed on the case, the adviser should send a closure letter, detailing the work carried out and the outcome, and giving general advice on how to deal with the various creditors in the future.
Notes

1. The adviser as a professional

2. The debt advice system
   2 The sale of a debt is known in law as an 'assignment' and the purchaser is known as an 'assignee'.
   3 In one case, the FOS found that a bank had not treated a customer who had approached it for advice and assistance about her debts 'sympathetically and positively' by insisting that the income/expenditure form she had completed had to be checked by an advice agency. See Ombudsman News 83, 2010 (Adviser 140 abstracts)
   4 paras 6-10 and 20-21 DMG
   5 ss157 and 157A CCA 1974
   6 s158 CCA 1974
   7 s159 CCA 1974
   8 OFT, Credit Repair Promises Fall Short, May 2000
Index

How to use this Index

Entries against the bold headings direct you to the general information on the subject, or where the subject is covered most fully. Sub-entries are listed alphabetically and direct you to specific aspects of the subject.

A
Access to Learning Fund 502, 540
priority groups 540
adjournment
court proceedings 277, 357
possession proceedings 327, 334, 335
recovery of goods on hire purchase/conditional sale 325
Adjudicator’s Office 27
administration order 263, 419
application 420
composition order 421
court fees 419, 422
court hearing 422
interest after judgment 294, 422
proposed order 421
reviews 422
admission and statement of means form 285
completing the form 285
creditor’s response 288
offers of payment 288
admission of claim
recovery of goods on hire purchase/conditional sale 324
recovery of money 284
adoption payments 180
Adviser Discretionary Fund 193
agents
liability for debts 85
alcohol
capacity to make contract 89
alternative dispute resolution 267
Financial Ombudsman Service 268
annulment of bankruptcy order 470
appeals
fees 277
fines officer’s decision 368
judgment or order of judge 276
time limits 277
arrest warrant 233
bailiffs 409
assets
realisable assets 238
* * * * 558
assured tenants 351
attachment of earnings order 309
Armed Forces 311
consolidated order 311
effect on client 310
failure 367
fines in the magistrates’ court 365
interest after judgment 294
making an order 309
suspended order 309
attendance allowance 44, 166
attendance centre order 377
attitudes to debt 16
auctions 404
B
bail
arrest warrant 233
bailiffs 387–416
aggressive behaviour 409
certificated bailiffs 388, 414
child support maintenance 390
codes of practice 394, 408, 412
complaints 410
council tax 230, 390
county court 389, 391
preventing seizure of goods 233
court action against bailiffs 411, 413
Criminal Records Bureau check 388
debt collection 387
distress warrant for financial penalties 369
distress warrant for financial penalties 369
emergency action 230, 415
court action 416
raising a lump sum 416
refusing access 415
withdrawing warrant 415
exempt goods 370, 400
exempt people 394
fees 405
disputing 405
recoverable 406
redemption 407
removing goods 407
force 396, 410
future changes 408
High Court enforcement officers 389, 392
identification 397
magistrates’ court 390, 393
non-domestic rates 390
notice of seizure 403
powers 394
arrest 409
charge fees 405
eveny 395, 396, 404, 497
levy and seize goods 397, 494
sell goods 404
rent arrears 388, 391
repossession for mortgage default 338, 344
road traffic penalties 389
standards 394, 408
statutory distraint 390
tax and national insurance 390
tax bailiffs
preventing seizure of goods 233
types of bailiff 387
VAT 390
walking possession 399
writ of fieri-facias 392

bankruptcy 263, 423, 437
advantages 438
annulment 470
bankruptcy 456
changing account 49
complaints 268
creditor’s petition 444
criminal offences 451
debt relief order as alternative 443
deptor’s petition 440
differences from debt relief orders 482
disadvantages 438
discharge 469
einforceable debts 469
earnings 458
exceptional circumstances 463
fuel supply 457
hearing 447
home 461
beneficial interest 464
endowment policy 463
joint property 462
low-value exemption 462
owner-occupied 461
rented 466
income payments agreement 459
income payments order 458
individual voluntary arrangement as alternative 427, 443
insurance policies 460
interim bankruptcy restriction order 455
joint property 450
mortgage shortfall 144
obtaining future credit 470
payments to creditors 450
pensions 460
post-discharge restrictions 452
bankruptcy restriction order 452
bankruptcy restriction undertaking 452
interim bankruptcy restriction order 455
pre-April 2004 bankruptcies 470
pre-discharge restrictions 452
preference to unsecured creditors 467
priority payments 451
procedure 437
after the order is made 448
protected goods 456
risks
credit rating 425
current assets 424
employment 425
future assets 424
home 426
reputation 426
sale of property 456
sale of vehicle 457
secured creditor’s rights 451, 469
statement of affairs 441
statutory demand 444
response 444
setting aside 445
student loans 461, 516, 518
supervisor’s petition 448
undervalue transactions 467
voluntary charge 221
when to use 423
who can become bankrupt 437

bankruptcy restriction order 452
application 453
bankruptcy restriction undertaking 452
application 453
banks
admission and statement of means form 286
bankruptcy 456
changing account 49
complaints 268
Index
banks – charging order

continuous payment authority
  cancelling 124
first right of appropriation 49, 511
graduate loans 512
mistaken payments to account 91
overdrafts 107
  students 511, 534
  personal loans 125
  students 534
professional and career development loans 535
professional studies loans 512, 536
beneficial interest in property 308
  bankruptcy 461, 464
benefits
  applicable amounts 183
  calculating means-tested benefits 182
  cap on total amount 182
  capital limits 185
  deductions from 188
  failure of application 367
  financial penalties 365
  priority debts 223
  future changes 165, 182
  housing costs 184
  income rules 186
  maximising income 163
  overlapping benefits 187
  overpayments 188
  remission of court fees 273
  students 537
  treatment as income 44
bereavement allowance 166
bereavement benefits 166
bereavement payment 166
bill paying services 241
bill of sale 109
  enforcement 112
  regulation 110
  valid and enforceable 110
budget account 113
budgeting advice 33
budgeting accounts
  see: bill paying services
budgeting loans 179
bursaries 502
  see: student grants
business assets 490
business debts 127, 487–99
  bankruptcy 499
  ceasing trading 490
  debt relief order 472
  distress for rent 495
  stages of debt advice 489
  creating trust 490
  financial statement 499
  listing expenditure 493
  listing income 493
  maximising income 493
  minimising debts 490
  non-priority debts 499
  priority debts 494
types of small business 487
  co-operatives and franchises 489
  limited company 488
  limited liability partnership 489
  partnership 488
  sole trader 487
  VAT arrears 496
business expenses 491
business lease 495
business rates
  see: non-domestic rates
buy-back schemes 216

C
cable television
  essential expenditure 35
cancellation rights
  procedural irregularities 104
  regulated credit agreement 75
capital 237
  benefits 185
  calculating income 45
  capitalising arrears 207
  completing the admission and statement of means form 286
  offering capital sum and instalments 251
  offering reduced capital sum 249
  realisable assets 238
capital repayment mortgage 140
carer premium 183
carer’s allowance 167
cars
  see: vehicles
case recording 8
CASHflow toolkit 18
ceasing trading 490
certificated bailiffs 388, 414
  see also: bailiffs
challenging debts 83
  mortgage shortfall 142
charge cards 128
charging order 301, 373
  conditions 306
  final order 303
  interim charging order 302
  joint property 308
  notice 303
  objecting to the order 303
  Office of Fair Trading requirements 302
  order for sale of property 307

560
Index
charging order – contracts

redetermination 304
suspension 306
charities 189
students 539
chattel mortgage 109
child benefit 167
child support payments
bailiffs 390
enforcement 129
listing expenditure 48
child tax credit 168
calculating 188
overpayments 151
priority debts 199
recovery 151
students 538
childcare costs
childcare grant for students 528
parents’ learning allowance 528
children
child benefit 167
child tax credit 168
disability living allowance 170
disabled child premium 183
guardian’s allowance 171
liability for debts 88
property protected from bailiffs 394
civil partnerships
bereavement benefits 166
see also: couples
civil recovery 130
civilian enforcement officers 390
see also: bailiffs, magistrates’ court
claim form 282
date of receipt 283
particulars of claim 282, 283
possession proceedings 326
mortgage arrears 331
rent arrears 347
responding to claim form 283
possession proceedings 332, 333, 348
sending by email or fax 284
statement of value 282
clamping order 371
clothing
exempt from seizure 400
listing expenditure 47
co-operatives 489
codes of practice
bailiffs 394, 408, 412
banks 108
creditors 32
debt collection 97
fuel suppliers 134
mental health problems 55
Mortgages and Home Finance: conduct of business sourcebook 148
payday and short-term loans associations 123
recovery of tax credit overpayments 152
water companies 155
cold weather payments 179
collection order 364
appeals 368
default 367
variation 367
committal proceedings 375
council tax arrears 381
hearing 234
suspension of order 376, 382, 383
warrant 361
common financial statement 51
community care grants 178
local authority welfare provision from April 2013 191
compensation 190
compensation order 377
priority debts 197
complaints
against bailiffs 410
composition order 421
conditional sale agreement 114
bill of sale 112
listing expenditure 48
preventing repossession 355
priority debts 198
recovery of goods 323, 325
seizure of goods 402
consolidated agreement
definition 101
constructive levy 398
constructive seizure 399
Consumer Credit Act 1974 60–81
prescribed terms 72
regulated agreements 65
time orders 340
Consumer Credit Act 2006 66
Consumer Credit Counselling Service 242
customer credit licence 60
see: credit licensing
customer protection
regulatory bodies 25
contact lenses
vouchers towards cost 172
continuous payment authority 123
contracts 84
capacity to make contract 89
children and young people 88
consolidated agreement 100
default charges 91
misrepresentation 89
necessaries 88
procedural irregularities 104
related agreement 100
undue influence 89

561
Index
contracts – credit cards

unfair relationship 98
unfair terms 92
cooling-off period
regulated credit agreement 75
secured loan 126
council tax 131
bailiffs 230, 381, 390, 394
bankruptcy proceedings 231
deductions from benefits 223
distress 390
emergency action 230
enforcement 378, 390, 394
imprisonment 381
liability
dead 87
joint and several liability 84, 87, 132
liability orders 378
setting aside liability order 380
limitation period 275
outcome of committal hearing 382
prior debts 197
remitting 226
rescheduling 209
students 522
wilful refusal/culpable neglect 381
council tax benefit 168
local authority payments from April 2013
students 538
counterclaims 295
defence and counterclaim form 296
housing disrepair 91, 348
rented accommodation 348
county court 265–78
action in the civil courts 270
administration order 420
alternative dispute resolution 267
avoiding court action 266
bailiffs 389, 391
preventing seizure of goods 233
court rules 265
Courts Charter 265
designated money claims 282
execution of judgment 389
by High Court 389
fees 273
assessing income 273
joint and several liability 274
remission 273
forms 266
judgment 288
jurisdiction 282
financial 280
possessions proceedings 326
mental capacity 272
litigation friend 272
money claims 280–320
possessions proceedings 326

* * *
562

goods and property 323
mortgage/secured loans 327
rent arrears 346
pre-action conduct practice direction 266
pre-action protocols 266
preventing enforcement 314, 355
adjournments 277, 357
appealing to a judge 276, 357
applications 271
suspension of possession order 355
suspension of warrant of delivery 355
suspension of warrant of execution 319
variation of order 317
recovery of goods 323
recovery of money
designated money claims 282
regulated credit agreements 280, 323
representation 265
time orders 220
tracks 297
transfer of case to local court 282
user groups 265
see also: County Court Bulk Centre
County Court Bulk Centre 282
hybrid orders 305
County Court Money Claims Centre 282
couples
business partnership 492
calculating income 43
completing the admission and statement of means form 285
consulting partners 17
individual voluntary arrangement 431
joint and several liability 84
joint property 450
liability after death 87
court orders
completing the admission and statement of means form 288
enforcement of judgment 298
entered in default 292
instalment order
calculation by court 289
payment order 288
possession order
mortgage arrears 338
courts
liaison groups 28
monitoring 28
representation 22
type of court hearing 22
user groups 28
credit agreements 65
credit cards 114
joint liability 115
linked agreements 115

* * *
562
Index

debt advice – disability

maximising income 43, 161–95, 493, 522
minimising debts 41, 83–105, 490, 506, 522
non-priority debts 53, 236–64, 499
priority debts 49, 196–234, 494, 542
student debt 501, 505
triage interview 11

debt adviser 1
attitudes to debt 3, 16
budgeting advice 33
business debts 487
contact with client 13
court representation 22
creating trust 40
debt relief orders 480
information provided to client 7
interviewing 16
letter writing 19
negotiation 17
skills 16–38
student debt 505

debt collection
harassment 33
Office of Fair Trading guidance 30
unfair practices 31

debt consolidation 218, 259
risks 260

debt management companies 1, 242

debt management plan 242

debt relief order 263, 472
alternative to bankruptcy 443, 482
business debts 472
change of circumstances 478
effect of debt relief order 479
excluded debts 472
expenditure
hire purchase payments 475
rent arrears 475
fees 477
foreign debts 472
guarantors 472
hire purchase agreements 473
intermediary’s role 480
Motor Insurers’ Bureau claims 473
offences 482
Official Receiver 481
procedure
application 477
refusal 478
revocation 482
property 474
cash 476
disregards 474
money owed 476
right to claim compensation 476
qualifying conditions 474
qualifying debts 472

* * *

564

debts not covered by Consumer Credit Act
127
business debts 127
charge cards 128
civil support payments 128
civil recovery 130
council tax 131
fines 133
fuel charges 133
income tax 138
maintenance payments 139
mortgage shortfalls 141
mortgages 140
national insurance contributions 145
non-domestic rates 146
regulated mortgage contracts 147
rent 149
shoplifting 130
social fund repayments 150
tax credit overpayments 151
traffic penalties 156
value added tax 153
water charges 154

deduction from earnings order
child support payments 129

deductions from benefits 188, 223
bankruptcy 468
credit unions 38
failure of application 367
financial penalties 365
priority order of deductions 223

default charges 91
default judgment 292
default notice
information required 281
recovery of goods on hire purchase / conditional sale 324
recovery of money 281
time limits 281

defence and counterclaim form 295
possession proceedings 333
recovery of money 295
defferred interest mortgage 140
delaying tactics 252
dental treatment 172
dependants
designated money claims 282
student grants 528
determination of means calculator 290
disability
assistance funds 194
attendance allowance 166
disability living allowance 169
disability premium 184
<table>
<thead>
<tr>
<th>Disability</th>
<th>Enforcement Agents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Discharged from bankruptcy</td>
<td>469</td>
</tr>
<tr>
<td>Disabled child premium</td>
<td>183</td>
</tr>
<tr>
<td>Employment and support allowance</td>
<td>170</td>
</tr>
<tr>
<td>Enhanced disability premium</td>
<td>184</td>
</tr>
<tr>
<td>Income support</td>
<td>174</td>
</tr>
<tr>
<td>Industrial injuries benefits</td>
<td>175</td>
</tr>
<tr>
<td>Personal independence payment</td>
<td>177</td>
</tr>
<tr>
<td>Severe disability premium</td>
<td>184</td>
</tr>
</tbody>
</table>

**Disability Benefits**
- Treatment as income | 44 |

**Disability Living Allowance**
- 44, 169

**Disability Premium**
- 184

**Disabled Child Premium**
- 183

**Discharge from Bankruptcy**
- 469

**Disconnection**
- Fuel | 135, 197
- Business debts | 494
- Deductions from benefits | 223
- Emergency action | 228
- Meter tampering | 137
- Water | 198

**Dismissal**
- Pay in lieu of notice | 192

**Distraint**
- See: distress

**Distress**
- 388
  - Child support payments | 129, 390
  - Council tax | 230, 381, 390, 394
  - Emergency action | 230
  - Financial penalties | 230, 369, 375, 390, 393
  - National insurance contributions | 390
  - Non-domestic rates | 390, 494
  - Rent | 388, 391
  - Business property | 495
  - Statutory distraint | 390
  - Tax | 138, 233, 390, 392
  - Tax credit overpayments | 390
  - VAT | 390, 393, 497
  - See also: bailiffs

**Distress Damage Feasant**
- 388

**Drugs**
- Capacity to make contract | 89

**Duress**
- Liability for debts | 492

**DVD Players**
- Essential expenditure | 35

**E**

**Early Settlement of Credit Agreement**
- 98

**Earnings**
- Bankruptcy | 458

**Electricity**
- See: fuel charges

**Electronic Communication**
- Claim forms | 284
- Possession claim online | 332
- Regulated credit agreement | 75

**Emergency Action**
- Against bailiffs | 415
  - County court bailiffs | 233
  - Enforcement officers | 233
  - Magistrates’ court bailiffs | 230
  - Tax bailiffs | 233
- Council tax arrears | 230
- Dealing with priority debts | 227
- Fuel disconnection | 228
- Possession of home | 229
- Preventing imprisonment | 233

**Employer**
- Loans from employer | 241

**Employment**
- Effect of bankruptcy or individual voluntary arrangement | 425
- Students | 542

**Employment and Support Allowance**
- 170
  - Deductions from benefit | 223
  - Mortgage interest payments | 184
  - Support component | 184
  - Work-related component | 184

**Endowment Mortgage**
- 140
  - Changing to repayment mortgage | 210
  - Interest-only payments | 203
  - Reduced payments | 205
  - Surrender value | 211

**Enforcement Action**
- 298
  - Attachment of earnings order | 309
  - Bankruptcy creditors | 468
  - Charging order | 301
  - County court bailiffs | 389
  - High Court enforcement officers | 389
  - Liability order | 380
  - Magistrates’ court compensation order | 377
  - Council tax arrears | 378
  - Financial penalties | 361
  - Non-priority debts | 240
  - Preventing enforcement | 314, 355
  - Adjudgments | 277, 357
  - Appealing to judge | 276, 357
  - Application to court | 271
  - Investigating liability | 94
  - Setting aside judgment | 314, 355
  - Suspended possession order | 355
  - Suspended warrant of delivery | 355
  - Suspended warrant of execution | 319
  - Suspensions and stays | 319
  - Variation of payment | 317
  - Regulated credit agreement | 74
  - Third-party debt order | 312
  - Transferring court case | 301
  - Warrant of execution | 300

**Enforcement Agents**
- See: bailiffs

---

*565*
Index

enforcement officers – fines

enforcement officers
see: bailiffs

enhanced disability premium 184

entry by bailiffs
business premises 497
force 396
identification 397
method 396
place 395
refusing access 415
right of entry 395
timing 395

equal pay 190

equitable distribution 255
equity in the home 238

European Commission Consumer Credit Directive 2008 68

eviction
see: repossession

execution 389
county court 389, 391
High Court 389, 392
suspending in the county court 233
warrant 300

exempt goods
bailiffs 494
bankruptcy 456
seizure 400

expenditure 46
assessment
installment orders 289
business expenses 491, 493
completing the admission and statement of means form 287
essential expenditure 48
luxury items 48
students 507
verifying expenditure 48

extortionate credit 99

F
families
debts to families 241
family premium 183

family premium 183

fast-track proceedings 297

fast-track voluntary arrangements 471

faulty goods/services 91

fees
administration order 419, 422
appeals 277
bailiffs 405
court 273, 283
assessing income 273

remission 273
debt relief order 477
suspending warrant of delivery 355
suspending warrant of execution 319
suspending warrant of possession 356
time order 342
variation of payments made under court orders 318, 319
variation of possession order 356

financial advice 36
Money Advice Service 36
regulation by Financial Services Authority 36

financial capability 36

Financial Contingency Fund 502, 540

financial exclusion 35

financial inclusion 36

Financial Ombudsman Service 27, 268
information required for complaint 269

financial penalties 133
emergency action 230
enforcement action 361, 364
appeals and referrals 368
attachment of earnings order 365, 367
attendance centre order 377
charging order 373
clapping order 371
collection order 364, 367
deduction from benefits 365, 367
distress 230, 369, 390, 393
imprisonment 362, 375
short local detention 377
third-party debt order 373
unpaid work order 377
listexpenditure 48
listing expenditure 48
means enquiry 374
money payments supervision order 375
more than one penalty 363
payment by instalments 362, 375
priority debts 197
registration 364
remitting a fine 226, 374
return date 375
setting aside 364
time to pay 362
transfer of fines 364
variation 364

Financial Services Authority
Conduct of Business Sourcebook 108
Mortgages and Home Finance:
conduit of business sourcebook 327
regulation of financial advice 36

financial statement 34, 50
business debts 499
common financial statement 51
disability benefits 45

fines
see: financial penalties

566
### Index

**first right of appropriation** 49, 511  
**fixed-rate mortgage** 141  
**food**  
- listing expenditure 47  
**foodbanks** 191  
**force**  
- definition 396  
- use of force by bailiffs 396, 410  
**foreign debts**  
- debt relief order 472  
**forged signature** 86  
**franchises** 489  
**free school lunches** 191, 538  
**freezing interest** 247  
**friends**  
- debts to friends 241  
**fuel charges** 133  
- backbilling code 136  
- bankruptcy 457  
- business debts 494  
- deductions from benefits 223  
- disconnection 135  
- emergency action 228  
- estimated bills 135  
**liability**  
- after death 87  
- electricity 134  
- gas 135  
- limitation period 136, 275  
- listing expenditure 46  
**meters**  
- faults 137  
- tampering 137  
- theft from meters 137  
- non-fuel items 137  
- pre-payment meters 225  
- priority debts 197  
- priority services register 138  
- rescheduling arrears 209  
- social tariffs 137  
**full and final settlement**  
- mortgage shortfall 145  
**funeral payments** 179  
**furniture**  
- exempt from seizure 400  
- listing expenditure 46  

**G**  
**garnishee orders** 312  
**gas**  
- see: fuel charges  
**glasses**  
- vouchers towards cost 172  
**goods**  
- bankruptcy 456  
- exempt from seizure 400, 494  
- faulty goods reducing liability for debts 91  
- recovery of goods on hire purchase/conditional sale 323  
- removing goods to prevent seizure 415  
**graduate loans** 512  
**grants**  
- see: student grants  
**Green Book** 266  
**guarantee payments** 191  
**guarantor of debts** 85, 241  
- children and young people 88  
- debt relief order 472  
**guardian's allowance** 171  

**H**  
**harassment** 29, 520  
**hardship funds**  
- students 541  
- trade unions 195  
**hardship payment order** 313  
**health benefits** 171, 538  
**health costs**  
- listing expenditure 47  
**Healthy Start scheme** 172  
**High Court**  
- enforcement action  
  - preventing seizure of goods 233  
  - enforcement officers 389  
- enforcement orders  
  - writ of fieri-facias 392  
  - execution 389  
  - jurisdiction  
  - possession proceedings 326  
  - regulated credit agreements 280, 323  
  - transferring case  
  - enforcement 301, 389  
**hire purchase agreement** 116  
- bill of sale 112  
- debt relief order 473  
- ending the agreement 117  
- joint liability 117  
- listing expenditure 48  
- preventing repossession 355  
- priority debts 198  
- recovery of goods 323, 325  
- sale of goods 117  
- seizure of goods 402  
- subsidiary agreements 118  
- voluntary surrender 117  

**holding tactics** 252  
**homelessness** 217, 262, 334, 349  
**hospital travel costs** 172  
**household expenditure**  
- trigger figures 52  
**household goods**  
- exempt for bankruptcy 456  
- exempt from seizure 400  
- listing expenditure 47  

---

**567**
Index

housing – insolvency practitioners

housing
  bankruptcy 461
  bankruptcy or individual voluntary arrangement 426
  costs
    deductions from benefits 223
    listing expenditure 46
    paid by benefits 184
  council tax benefit 168
  deductions from benefits 223
  disrepair 91, 348
  housing benefit 173
  sale of home 216, 261, 461
housing benefit 173
  overpayments treated as rent arrears 350
  students 538
hybrid order 305

I
  illegal money lending 241
impounding goods 398
imprisonment
  child support payments 129
  committal hearing 234
  committal warrant 361, 382
  council tax 381
  emergency action to prevent 233
  financial penalties 362, 375
  judicial review 234
  short local detention 377
  suspension of order 376, 382
in-work credit 193
incapacity benefit 174
income 43
  availability 237
  benefits 186
  business 491
  calculating 44
  couples 43
  students 506
income payments agreement 459
income payments order 458
income support 174
  deductions from benefit 223
  mortgage interest payments 184
  students 539
income tax
  allowances 194
  arrears 138, 497
  enforcement 392
  distress 390, 392
    preventing seizure 233
  enforcement 390
  priority debts 198
  rebate 194
  refunds 542
  reliefs 195
  remitting arrears 226
self-assessment 497
  students 542
  summons to magistrates’ court 498
indemnity insurance 141
individual voluntary arrangement 264, 423,
  427
  advantages 430
  alternative to bankruptcy 427, 443
  applications 431
  business debts 499
  challenging 436
  completion 437
  costs 427
  disadvantages 430
  fast-track voluntary arrangements 471
  insolvency practitioner 431
  mortgage shortfall 144
  post-bankruptcy 470
  procedure 427
    creditors’ meeting 434
    interim order 433
    proposal 431
  protocol for straightforward consumer IVAs 428
    client’s home 429
risks
  credit rating 425
  current assets 424
  employment 425
  future assets 424
  home 426
  reputation 426
  straightforward consumer IVAs 428
  protocol 429
  standard terms and conditions 429
  supervisor 418, 435
  supervisor’s petition 448
  when to use 423
  who can make an IVA 427
industrial diseases/accidents 175
industrial injuries benefits 175
information
  completing the admission and statement
    of means form 285
  credit reference agencies 8
  orders to obtain information 299
  provided to client 7
Information Commissioner
  correcting inaccurate credit files 11
insolvency 418–83
  administration order 418
  bankruptcy 437
  choosing between bankruptcy and an
    individual voluntary arrangement 423
  definition 418
  individual voluntary arrangement 427
insolvency practitioners
  individual voluntary arrangement 431
### Insolvency Register – liability for debts

- calculation by court 289
- redetermination by district judge 291
- interest on judgment debts 293
- magistrates’ court fines 362, 375
- mortgage shortfall 145
- nil or negative figure 290
- payment of capital and instalments 251
- repayment period 240
- token payments 254

### Institute of Money Advisers
- insurance
  - after death 87
  - bankruptcy 460
- intentionally homeless 262, 334, 349
- intercalating students 539
- interest
  - after judgment 293
  - administration order 422
  - bank overdrafts 107
  - contractual interest 294
  - discretionary interest 293
  - freezing 247
  - limitation period 274
  - reducing interest rate 204
  - statutory interest 294
- interest-free credit 119
- interim order
  - charging order 302
  - individual voluntary arrangement 433
- intermediaries in debt relief orders 480
- interpleader 414
- interviewing skills 16

### J
- job grant 193
- jobseeker’s allowance 175
- deductions from benefit 223
- mortgage interest payments 184
- students 539
- joint and several liability 84
  - business partnership 488
  - council tax 84, 132
  - court fees 274
  - credit cards 115
  - death 87
  - hire purchase agreement 117
- joint property
  - bankruptcy 450, 462
  - charging order 308
  - death 88
  - equity in home 238
- judgments 288
  - admission and statement of means form 288
  - default 292
  - enforcement 298

<table>
<thead>
<tr>
<th>Index</th>
<th>Insolvency Register – liability for debts</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>interest on judgment debts 293</td>
</tr>
<tr>
<td></td>
<td>Register of Judgments, Orders and Fines</td>
</tr>
<tr>
<td></td>
<td>293</td>
</tr>
<tr>
<td></td>
<td>requesting time to pay 289</td>
</tr>
<tr>
<td></td>
<td>setting aside 314, 355</td>
</tr>
<tr>
<td></td>
<td>stay of judgment 263, 319</td>
</tr>
<tr>
<td></td>
<td>summary 288</td>
</tr>
<tr>
<td>judicial review</td>
<td>234</td>
</tr>
<tr>
<td>jurisdiction</td>
<td>financial limits for court action 280</td>
</tr>
<tr>
<td></td>
<td>tracks 297</td>
</tr>
<tr>
<td>L</td>
<td>Land Registry 449</td>
</tr>
<tr>
<td>landlords</td>
<td>bankruptcy of tenant 466</td>
</tr>
<tr>
<td>laundry</td>
<td>listing expenditure 47</td>
</tr>
<tr>
<td>lay</td>
<td>representation 22</td>
</tr>
<tr>
<td>lay-offs</td>
<td>guarantee payments 191</td>
</tr>
<tr>
<td>learning difficulties</td>
<td>capacity to make contract 89</td>
</tr>
<tr>
<td>lease</td>
<td>business equipment 495</td>
</tr>
<tr>
<td></td>
<td>business premises 495</td>
</tr>
<tr>
<td>Legal Ombudsman</td>
<td>28</td>
</tr>
<tr>
<td>letter</td>
<td>writing 19</td>
</tr>
<tr>
<td>levy</td>
<td>397</td>
</tr>
<tr>
<td></td>
<td>constructive levy 398</td>
</tr>
<tr>
<td></td>
<td>see also: distress, bailiffs</td>
</tr>
<tr>
<td>liability</td>
<td>for debts 84</td>
</tr>
<tr>
<td></td>
<td>acknowledgement of debt 275</td>
</tr>
<tr>
<td></td>
<td>agents 85</td>
</tr>
<tr>
<td></td>
<td>business debts 127, 488</td>
</tr>
<tr>
<td></td>
<td>business partners 488</td>
</tr>
<tr>
<td></td>
<td>capacity to make contract 89</td>
</tr>
<tr>
<td></td>
<td>children and young people 88</td>
</tr>
<tr>
<td></td>
<td>co-operatives 489</td>
</tr>
<tr>
<td></td>
<td>consolidated agreement 100</td>
</tr>
<tr>
<td></td>
<td>death 87</td>
</tr>
<tr>
<td></td>
<td>early settlement of credit agreement 98</td>
</tr>
<tr>
<td></td>
<td>electricity charges 134</td>
</tr>
<tr>
<td></td>
<td>faulty goods/services 91</td>
</tr>
<tr>
<td></td>
<td>finding out about debts from creditors 93</td>
</tr>
<tr>
<td></td>
<td>forged signature 86</td>
</tr>
<tr>
<td></td>
<td>franchises 489</td>
</tr>
<tr>
<td></td>
<td>gas charges 135</td>
</tr>
<tr>
<td></td>
<td>guarantors 85, 241</td>
</tr>
<tr>
<td></td>
<td>housing disrepair 91</td>
</tr>
<tr>
<td></td>
<td>inaccurate calculations of money owed 83</td>
</tr>
<tr>
<td></td>
<td>insurance 87</td>
</tr>
<tr>
<td></td>
<td>joint and several liability 84, 488</td>
</tr>
<tr>
<td></td>
<td>limited company 489</td>
</tr>
<tr>
<td></td>
<td>limited liability partnership 489</td>
</tr>
<tr>
<td></td>
<td>mail order catalogue debts 85, 121</td>
</tr>
<tr>
<td></td>
<td>misrepresentation 89, 492</td>
</tr>
<tr>
<td></td>
<td>mistaken payments to bank account 91</td>
</tr>
</tbody>
</table>

---

569
**Index**

liability for debts – maximising income

---

mortgage shortfall 141
procedural irregularities 104
related agreement 100
sole trader 488
traffic penalties 157
undue influence 89, 492
unfair relationship 98
unlicensed creditors 61, 97
water charges 155
wrong person 86

**liability order**
child support payments 129
council tax 232, 378
enforcement 380
non-domestic rates 146, 494
setting aside 380
time limit for enforcement 382

**liaison groups** 28

**licensing of creditors**
see: credit licensing

**life insurance** 87

**limitation periods** 274
acknowledgement of debt 275
fuel charges 136
part-payment 276
statute-barred 275

**limited company** 488

**limited liability partnership** 489

**linked credit agreement**
credit cards 115
interest-free credit 120
personal loan 125

**litigation friend** 272

**loan sharks** 241
debt relief order 473
loans
employer 241
friends/family 241
personal 125
students 534
responsible lending 63
social fund 178

**local authority**
councillors 26
obtaining liability order for council tax 378
payments
council tax 191
welfare provision 191

**Local Government Ombudsman** 27

**London Gazette** 449

**lone parents**
income support 174

**low income**
child tax credit 168
health benefits 172
Sure Start maternity grant 179
working tax credit 182

---

low-start mortgage 140
lump sums
charities 189
payment to creditors 249
raising a lump sum 416
trade unions 195

luxury items 34

M

**magistrates’ court** 360–84
bailiffs 390, 393
powers to arrest and search 410
preventing seizure of goods 230
compensation order 377
distress 400
enforcement of financial penalties 364
income tax 498
liability order for council tax 378
power to remit debts 226

**mail order catalogues** 120, 241
liability of agents 85

**maintenance payments** 139
listing expenditure 48
priority debts 197

marriage
bereavement benefits 166
see also: couples

maternity allowance 176

maternity benefits
maternity allowance 176
statutory maternity pay 180
Sure Start maternity grant 179

maximising income 45, 161–95
benefits and tax credits 163
businesses 493
charities 189
child maintenance 190
compensation for damages 190
disability/illness assistance funds 194
equal pay 190
foodbanks 191
free school lunches 191
guarantee payments 191
income tax
allowances 194
rebate 194
reliefs 195
local authority payments 191
minimum wage 192
notice pay 192
pensions 192
redundancy payments 193
return-to-work help 193
school costs 193
social services 194
students 522
trade unions 195
war pensions 192

---

570
Index

McKenzie Friend – non-priority debts

McKenzie Friend 23, 361

means enquiry
  council tax 381
  financial penalties 362, 369, 374
  wilful refusal and culpable neglect 382, 383

media, social policy work 29

mediation schemes
  alternative dispute resolution 267

Member of Parliament 26

mental health
  capacity to make contract 89
  factor in choosing debt strategy 54
  protected party in court proceedings 272

mesne profits 149

meters 225
  faults 137
  tampering 137
  theft 137

minimising debts 83–105
  business debts 490
  identifying unfair relationship 101
  mortgage shortfall 142
  students 506, 522

minimum wage 192

minors
  liability for debts 88
  see also: children

misrepresentation
  liability for debts 89, 492

mobile phones
  essential expenditure 34

Money Advice Service 36

money payments supervision order 375

moneylenders
  responsible lending guidance 63

monitoring practices of creditors 8

moratorium 252

mortgage interest run-on 185

mortgage rescue schemes 212
  mortgage to rent 213
  shared equity 212

mortgage shortfall
  mortgage indemnity 141
  responsibilities of mortgagee in possession 344
  time limit for recovery 142

mortgages 140
  capitalising arrears 207
  changing to repayment mortgage 210
  deductions from benefits 223
  default charges 91
  indemnity guarantee 141
  interest paid by benefits 184, 204
  interest-only payments 203
  joint and several liability 84
  liability after death 87
  negative equity 202
  payment holiday 208
  possession proceedings 327
    after repossession 344
    possession claim online 332
  powers of court 335
  pre-action protocol 329
  priority debts 197
  reduced payments 204
  refinancing 218
  regulated mortgage contracts 147
  repayment period 201
  rescheduling arrears 208
  rescue schemes 212
  self-certification 148
  shortfall on sale 141, 203, 345
  challenging debts 142
  limitation period 275

Mortgages and Home Finance conduct of business sourcebook 148, 327

multi-track proceedings 297

N

national insurance contributions 145
  distress 390
  priority debts 199

national scholarship programme 525

National Standards for Enforcement Agents 394, 409

necessaries 88

negative equity 202

negotiation 17
  possession proceedings 326
  recovery of goods on hire purchase/conditional sale 324

NHS bursaries 532

non-dependants
  contribution to budget 35

Non-Domestic Rates 146, 494
  distress 390
  enforcement of unpaid rates 390
  remitting arrears 226

non-priority debts 236–64
  available income 237
  business debts 499
  capital 237
  choosing a strategy 53, 236
  completing the admission and statement of means form 288
  debt management plan 242
  enforcement 240
  general approach 240
  payment protection insurance 237
  strategies 243
    administration order 263, 419
    amount owed 239
    bankruptcy 263
    capital sum and instalments 251
    choosing a strategy 236

* * * * *

571
### Index

**non-priority debts – possession proceedings**

- debt consolidation 259
- debt relief order 263
- equitable distribution 255
- equity release loan 260
- freezing interest 247
- holding tactics 252
- individual voluntary arrangement 264
- partial write-off 246
- reduced capital sum 249
- sale of home 261
- stay of judgment 263
- token payments 254
- voluntary charge 262
- write-off 239, 244
- voluntary charge 221

**notice**

- court hearing 297
- eviction 352
- pay in lieu of notice 192
- possession hearing 332
- warrant of execution 391
- writ of fieri-facias 392

**O**

- occupational pension 192

- Ofcom 26

- offers of payment
  - completing the admission and statement of means form 288
  - creditor’s response 288

- Office of Fair Trading 25
  - charging order requirements 302
  - credit licensing 60
  - debt collection guidance 30, 409
  - guidance for debt advisers 2
  - guidance on mental capacity 55
  - information sheets 80
  - responsible lending guidance 63

- Official Receiver
  - debt relief orders 481
  - role 448

- Ofwat 26, 155

- Ombudsman Services: Energy 27

- Ombudsmen 27

- oral examination 299

- order for sale of property 307

- orders to obtain information 299

- overdrafts 107
  - students 511

- overpayments
  - benefits 188
    - after discharge for bankruptcy 469
  - student grants 521
  - student loans 522
  - tax credits 151
  - after discharge for bankruptcy 469

- overseas students 504

- owner-occupied property
  - possession proceedings 327

- ownership of goods
  - seizure 402

- parental contribution 506

- parking fines 156, 389
  - enforcement 392

- Parliamentary and Health Service Ombudsman 27

- partial write-off
  - credit rating 246

- particulars of claim
  - 283

- possession proceedings
  - mortgage arrears 331
  - rent arrears 347

- partnerships 488
  - limited liability partnership 489

- paternity payments 180

- pawnbrokers 121

- pay in lieu of notice 192

- payday loan 123

- payment orders
  - variation 317

- payment protection insurance 100, 102
  - mis-selling 102
  - non-priority debts 237

- pension credit 176
  - carer’s additional amount 183
  - deductions from benefit 223
  - mortgage interest payments 184
  - severe disability additional amount 184

- pension mortgage 140

- pensioner premiums 184

- pensions
  - bankruptcy 460
  - occupational pensions 192
  - private pensions 192
  - state retirement pension 177

- personal independence payment 177

- personal injury claims 190

- personal loans 125

- police
  - assisting bailiffs 397

- possession claim online 332, 347

- possession order 338
  - arguing against possession order
  - mortgage arrears 339
  - postponing possession 354
  - rent arrears 353
  - security of tenants 352
  - variation of order 355

- possession proceedings 326
  - adjournment 327, 334
  - claim form 326
  - mortgage arrears 331
Index

possession proceedings – regulated credit agreements

rent arrears 348
emergency action 229
goods on hire purchase/conditional sale 323
mortgage arrears 327
adjournment 335
after repossession 344
arguing against possession order 339
evidence 333
possession orders 338
postponing possession 337
powers of court 335
pre-action protocol 329
suspension of proceedings 336
tenants’ security 352
negotiating 326
possession claim online
mortgage arrears 332
rent arrears 347
rent arrears 346
arguing against possession order 353
assured tenants 351
counterclaims and set-offs 91, 348
grounds for possession 350
postponing possession 354
powers of court 350
pre-action protocol 346, 353
warrant of possession 352
what counts as rent arrears 350
secured loans 327
suspension of proceedings 356
time order 340

postgraduate students
bursaries 536
pre-action conduct practice direction 266
pre-action protocols 266
exchanging information 97
mortgage arrears 329
rent arrears 346, 353
pre-contract information
regulated credit agreement 67
agreement on or after 1 February 2011 68

prescriptions 172
priority debts 49, 196–234
business debts 494
definition 196
emergency action 227
preventing fuel disconnection 228
preventing imprisonment 233
preventing possession of home 229
preventing seizure of goods 230
general approach 199
identifying priority debts 197
penalties for non-payment 196
strategies 203
capitalising arrears 207
changing to repayment mortgage 210
deductions from benefits 223
interest-only payments 203
mortgage rescue schemes 212
pre-payment meters 225
reduced payments 204
refinancing 218
remittance of debts 226
sale of property 216
scheduled payment of arrears 208
time orders 220
voluntary charge 221
students 542
pro rata payments 255
professional and career development loans 513, 535
professional studies loans 512, 536
protected goods 456
Public Services Ombudsman for Wales 27

R
recovery action
action by creditors 42
goods on hire purchase/conditional sale 323, 325, 355
student debts to institution 520

redudancy 193
refinancing 218
Register of Judgments, Orders and Fines
regISTRATION of financial penalty 364
unpaid judgments 293
regulated credit agreements 65
annual statements 78
arrears notices 78
assessment of creditworthiness 70
cancellation 75
distance contracts 76
secondary contracts 76
consolidated agreement 100
default charges 91
default notices 79
default sum notices 79
definition 65
distance contracts 76
draft agreement 70
eyearly settlement 98
enforcement action 74
exemptions
businesses 67
high net worth individuals 67
explanation and advice 69
form of agreement 67
information sheets 80
interest after judgment 79, 294
irredeemably unenforceable 96
jurisdiction of court 280, 323
non-prescribed information 72
post-contract information 78
pre-contract information 67
Index
regulated credit agreements – secured loans

prescribed information 71
procedural irregularities 104
related agreements 100
secondary contracts 76
time orders 340
types of debt 107
bill of sale 109
conditional sale agreement 114
credit card 114
credit sale agreement 115
hire purchase agreement 116
interest-free credit 119
mail order catalogue 120
pawnbroker 121
payday loan 123
personal loan 125
revolving credit 125
second mortgage 125
store account 113
trading cheque/voucher 126
unenforceable 67, 96
unfair relationship 98
unlicensed creditors 97
withdrawal 75, 77
regulated mortgage contract 147
regulatory bodies
Ofcom 26
Office of Fair Trading 25
Ofgem 26
Ofwat 26
Ombudsmen 27
trading standards departments 25
related agreements 100
religious and cultural costs
listing expenditure 47
remitting
depts 226
financial penalties 362, 374
removing goods to prevent seizure 415
rent 350
assured tenants 351
bankruptcy 466
possession proceedings 346, 352
counterclaims 91, 348
deductions from benefits 223
definition 350
distress for rent arrears 388, 391
business property 495
housing benefit
overpayments treated as rent arrears 350
joint and several liability 84
liability after death 87
limitation period 275
mesne profits 149
non-payment of housing benefit 353
pre-action protocol 346, 353
possession proceedings 346
claim form 347
powers of court 350
warrant of possession 352
priority debts 197
rescheduling arrears 209
set-off to reduce arrears 91, 348
students’ accommodation charges 518
repairs
set-off against rent arrears 91, 348
repayment mortgage 140
replevin 414
repossession
bill of sale 109
emergency action to prevent loss of home 229
goods on hire purchase/conditional sale 117, 323, 325, 365
mortgage default 344
responsibilities of mortgagee in
possession 344
warrant of possession
mortgage arrears 338
rent arrears 352
see also: possession order, possession proceedings
repossession prevention funds 215
representation in court 22
request for time to pay 289
research councils 540
responsible lending 63
retirement
pension credit 176
pensioner premiums 184
state retirement pension 177
retirement pension 177
return-to-work credit 193
revolving credit 125
bank overdrafts 107
credit cards 114
store accounts 113
road traffic penalties 389
enforcement 392
S
sale and rent-back schemes 215
sale of home 216, 261
bankruptcy 461
satellite television
essential expenditure 35
scheduling
repayment of arrears 208
school clothing grants 193
school transport 194
second mortgages 125
secured loans 125
business loans 492
creditor’s rights on bankruptcy 451, 469

574
secured loans – student debt

default charges 91
interest-only payments 203
negative equity 202
possession proceedings 327
priority debts 197
reduced payments 204
refinancing 218
repayment period 201
rescheduling arrears 208
shortfall on sale 203, 345

seizure 397
business debts 495
constructive seizure 399
exempt goods 370, 400, 494
exempt people 394
impounding goods 398
notice of seizure 403
ownership of goods 402
preventing seizure 415
county court bailiffs 233
enforcement officers 233
magistrates’ court bailiffs 230
tax bailiffs 233
right to sell 404
auctions 404
walking possession agreement 399
wrongful seizure 403, 410, 413
see also: bailiffs, distress

self-employment
business debts 487–99
national insurance contributions 145
tax arrears 138, 497
tax reliefs 195

self-help debt advice 18
set-off
reducing liability for rent arrears 91, 348

setting aside
court judgment 314, 355
liability order 380
statutory demand 445

severe disability premium 184

shoplifting 130

short local detention 377

sickness
employment and support allowance 170
incapacity benefit 174
income support 174
industrial injuries benefits 175
statutory sick pay 181

sight tests 172

signature
forgeries 86
unsigned agreements 104
small claims track 297

social fund 178
repayments 150

social landlords
rent arrears
pre-action protocol 346

social policy 25

social services 194

social work courses 531

sole trader 487

statement of affairs 441

statement of means 285

statutory adoption pay 180

statutory demand 444
response 444
setting aside 445

statutory distraint 390
see also: distress

statutory maternity pay 180

statutory paternity pay 180

statutory sick pay 181

stay of judgment 263, 319

store accounts 113

strategies for dealing with debt
debt consolidation 259
deciding on priorities 196
implementing a strategy 57
mental health as factor 54
non-priority debts 53, 236, 243
priority debts 49, 203

striking out 298

student bursaries
see: student grants

student debt 501
accommodation charges 518
advising students 505
bank loans 512
bankruptcy 516, 518
benefits 537
child tax credit 538
council tax benefit 538
health benefits 538
housing benefit 539
income support 539
jobseeker’s allowance 539
time out from course 539
bursaries 524
council tax 522
debts to educational institution 518, 542
recovery 520
definitions 503
disabled students 506, 516
employment 542
expenditure 507
fines 519
graduate loans 512
hardship funds 541
income 506
income-contingent loans 514, 526
international students 504
loans 507, 512, 513, 514

575
Index

student debt – tenants

maximising income 522
Access to Learning Fund 540
bank loans 534
benefits 537
charities 539
Financial Contingency Fund 540
overdrafts 534
research councils 540
minimising debts 522
mortgage-style/fixed-term loans 513
national scholarship programme 525
overpayments
student grants 521
student loans 522
parental contributions 506
postgraduate loans and bursaries 536
prioritising debts 542
professional and career development
loans 513, 536
professional studies loans 512, 536
stages of debt advice
creating trust 505
listing creditors 506
listing expenditure 507
listing income 506
maximising income 522
minimising debts 506, 522
taxation 542
tuition fees 519, 525
types of debt 511

student finance 501
‘new system’ 504
‘old system’ 504
applications 502
fixed-fee system 504
full-time students
definition 504
grants 502
health-related courses 502
home students 503
loans 502
part-time students 502
definition 504
postgraduate students 502

student grants
adult dependants’ grant 528
bursaries 502, 524
NHS bursaries 532
postgraduate students 536
teacher training incentives 533
care leavers’ grant 530
childcare grant 528
disabled students’ allowance 527
higher education grant 528
maintenance grant 529
national scholarship programme 525
overpayments 521

parental contribution 506
parents’ learning allowance 528
part-time students 531
period of award 507
social work courses 531
special support grant 530
supplementary grants 527
teacher training incentives 533
travel allowances 530
Welsh Assembly learning grant 529

student loans 502
bankruptcy 461, 516, 518
change in circumstances 527
income-contingent loans 514, 522, 526
overpayments 522
professional and career development
loans 535
professional studies loans 536
studying abroad 527
tuition fees 525

summary disposal 298
summary judgment 298

Sure Start maternity grant 179

surrender
business lease 495
hire purchase goods 117

suspension of proceedings 319
adjournments 277, 357
committal 376, 382, 383
interest-only payments 204
possession proceedings 229, 327, 356
mortgage arrears 334, 336
recovery of goods on hire purchase/
conditional sale 325
warrant
of delivery 355
of distress 230, 370
of execution 233, 319
of possession 356
withdrawing warrant 415

T

tariff income 185
teacher training incentives 533
higher education grant 528
telephones
essential expenditure 34
limitation period for charges 275
listing expenditure 47
television
listing expenditure 47
see also: TV licence
third-party costs order 354
third-party debt order 312, 373

tenants
see: rent
Index

time limits – water charges

---

time limits
appealing a judgment or order 277
court action to recover debts 274
default notice 281
defence and counterclaim form 296
enforcing liability order 382
particulars of claim 283
responding to claim form 283
serving claim form 283
possession proceedings 332
time order 220, 340
possession proceedings 335, 340
amount to offer 343
application 342
reviews 344
sum owed 343
varying terms 343
when to apply 341
recovery of goods on hire purchase/conditional sale 325
token payments 254
tracker mortgage 141
tracks in court proceedings 297
trade associations 26
trading cheques 126
trading standards departments 25
trading vouchers 126
traffic penalties 156
transferring court case
enforcement 301, 389
transport costs
listing expenditure 47
trigger figures 52
trustee in bankruptcy 450
tuition fees 519, 525
TV licence
listing expenditure 47
priority debts 198
types of debt 107–58

U
undervalue transactions 467
undue influence
liability for debts 89, 492
unemployment
income support 174
jobseeker’s allowance 175
unfair relationships 98
examples 101
remedies 103
universal credit 165, 181
calculating 186
unlicensed creditors 61, 97
unpaid work orders 377
unregulated credit agreements 66
unfair relationship 98
unsigned agreements 104

V
variation of order 317
fees 318, 319
suspended possession order 355
VAT 153
arrears 496
enforcement 393
distress 390, 393
preventing seizure of goods 233
priority debts 198
vehicles
bankruptcy 457
bill of sale 109
code of practice 112
clamping 371, 388, 400
conditional sale agreement 114
essential expenditure 34
hire purchase 117
seizure by bailiffs 401
victim’s surcharge 362
voluntary charge 221, 262
vulnerable people
property protected from bailiffs 395

W
walking possession 399
war pensions 192
warrant
arrest 409
with bail 233
without bail 234
committal 361, 375, 382
suspension 376, 382
delivery 325
suspension 355
distress 369
suspension 230, 370, 415
entry
fuel disconnection 228
execution 233, 200, 391
suspension 233, 319, 392
possession 338, 344, 352
emergency action to suspend warrant 229
suspension 356
warning notice 391
withdrawing warrant from bailiffs 415
water charges 154
business debts 494
deductions from benefits 223
disconnection 198
included in rent 350
joint and several liability 84
liability
after death 87
limitation period 275

---

577
Index
water charges – young people

regulation 155
WaterSure scheme 156
Welsh Assembly learning grant 529
wheel clamping 388, 400
widowed parent’s allowance 166
wilful refusal 375, 381, 382, 383
winter fuel payments 179
work capability assessment 170
working tax credit 182
calculating 188
overpayments 151
distress 390
priority debts 199
recovery 151
writ of fieri-facias 392
write-off 244
credit rating 245
mortgage shortfall 144
non-priority debts 244
partial write-off 246
wrong person
liability for debts 86

Y
young people
see: children