

dealing with your business debts

confidential, independent,
free advice on debt and
cashflow problems for people
who are self-employed

BUSINESS DEBTLINE
0800 197 6026
www.bdl.org.uk

ENGLAND & WALES



Money
Advice
Trust

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It is important to work through this pack step by step, following stages 1-8. However, this contents list will help you refer to the sections you need at a glance.

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HOW TO USE THIS PACK

WE'RE HERE TO HELP

Business Debtline is a free, confidential and independent helpline for people who have cashflow and debt problems.

The helpline is staffed Monday to Friday during business hours – a 24 hour answering service operates outside of these hours and when the lines are busy.

Business Debtline provides practical advice to callers via the telephone, supported by this free self-help pack which is designed to help you manage your way through your financial difficulties.

Whilst there can never be any guarantee of success, we feel that if you follow the methodical approach outlined in this pack, you may stand a better chance of keeping your business going and dealing with your debts.

Nevertheless, Business Debtline and its advisers cannot be held responsible for any action that you may take, based on advice given in this pack.

BUSINESS DEBTLINE WEBSITE

You may also want to visit the Business Debtline website at www.bdl.org.uk where you can view and complete the business and household budget sheets for you to print off.

CONFIDENTIALITY

To protect caller's confidentiality Business Debtline do not use British Telecom's "caller display" equipment. This means we cannot see your number displayed on a screen when you ring. We also have a permanent block on the "caller return" service. This means that, if we ring you back, the Business Debtline number will not be announced as the last number to ring you to anyone dialing "1471." This is in case you don't want anyone to know we have contacted you.



WARNING Itemised phone bills

Your phone bills to Business Debtline may be listed on an itemised phone bill. You need to bear this in mind if your call is in confidence and someone else may see your phone bill. If you are calling Business Debtline on a mobile phone some networks may not charge you for the call because you are ringing a helpline.

WHAT THIS PACK COVERS

This pack gives you practical advice on dealing with your business and other debts.

It shows:

- How to work out your **business and household budget** (a budget sheet comes with this pack). Use this to work out your income from the business and then fill in the household part of the budget. You can use this to explain your situation to the people you owe money to (your creditors). Everyone wants you to pay their bill, but they don't stop to realise that you have other problems. Seeing your business and household budget may stop them all chasing you for money at the same time. It may also avoid you being forced into making promises you cannot keep.
- How to decide which debts to deal with first – your **priority debts**.
- How to make reasonable offers to repay your creditors.
- How to cope with court procedures.

We have a number of specialist factsheets covering domestic rent and mortgage arrears, individual voluntary arrangements (IVAs), debt recovery and bankruptcy. We regularly update and expand the literature that we produce and may have additional material available since producing this pack. This booklet is a general guide to dealing with business debts. If you'd like to discuss anything in more detail, **please phone us on the freephone helpline number – 0800 197 6026**.



WARNING Your credit rating

Some organisations will tell you it is possible to make reduced payments to your creditors without it affecting your credit rating. This is not usually the case. Most creditors will add to your credit reference file to show that you are behind with your payments even if they agree to your offer. You need to bear this in mind for the future. See the section "Can I get credit again?" on page 35.



WARNING Companies that charge for advice

You may come across companies who offer to sort out your debts on payment of a fee. Be very careful to look at what the company is promising to do for you before sending them any money. Some of these companies say they will get your creditors to write off part or all of your debts. Unless you have special circumstances this is unlikely to happen. They may also not give sufficient advice on dealing with your business debts and only assist with personal debts. Our service is completely free, **phone us for advice**.

GOLDEN RULES

- **Don't ignore the problem.** It won't go away and the longer you leave it the worse it gets.
- **Don't borrow money to pay off your debts** without thinking carefully, especially if the loan is to be secured against your home or business premises.
- **Check your credit agreement to see if you have payment protection insurance** which may cover you in the event of being out of work due to illness or redundancy.
- **Check that you are claiming all the benefits and tax credits you can.** See "Increasing your income" on page 9.
- **Use this self-help pack to help work out your business and household budget.** Make sure you show it to your creditors when you contact them. Get advice first.
- **Make sure you tackle your priority debts first.** For example debts which could close your business down or which could mean you losing your home, or having essential services cut off, such as gas, electricity and water.
- **Get in touch with your creditors** straight away and explain your difficulties. Go and see them, phone or write to them. You can use the example letter on page 31.
- **Use this self-help pack to help work out a reasonable offer to repay** the money owed. Don't worry if it appears very small if that is really all you can afford. Creditors prefer you to pay a small amount regularly than make an arrangement you cannot keep to.
- **Contact everyone you owe money to.** If you make arrangements to pay a reduced amount to some creditors but not others, you could run into difficulties again.
- **If the first person you speak to is unhelpful,** ask to speak to somebody more senior who may be able to agree to what you want.
- **Don't give up trying to reach an agreement** even if creditors are difficult.
- **Fill in the reply forms to court papers** and let the court have all the facts. You can attach a copy of your budget sheet. Always follow the instructions on the court papers, especially about where to return them.
- **Always attend court hearings.** Take a copy of your budget sheet with you. Don't think that going to the county court makes you a criminal; it's not that kind of court. However, matters heard in the magistrates' court can be more serious, such as business rates, council tax and fines.
- **Always keep copies of any letters** you send or receive, and make a record of telephone conversations in a diary or notebook for future reference.

REMEMBER

We are always here to help with letters and forms, and we can explain what to do if you are asked to go to court. **Phone us for advice.**

WORKING OUT A BUSINESS BUDGET

This section explains how to work out what is coming in and going out of your business to see what income you are bringing in to your household.

WHY IS IT IMPORTANT TO WORK OUT MY BUSINESS BUDGET?

Because it helps you to:

- See how much money is coming into the business
- See how much money is going out on business costs
- Work out roughly how much tax and VAT you will have to pay, which should be put aside so that you can afford to pay the demands when they fall due. There is a factsheet enclosed to help you work this out
- Plan your **household budget** on what you can **really afford** to draw from the business each month, whilst ensuring that you have enough money to cover essential living costs
- Work out how much you have to pay all your creditors and the courts
- Plan your future spending on the business and your home.

This pack will help you to collect the facts you need to fill the budget sheet in completely and accurately.

By way of an example, on page 14 we have used a budget for a retailer who is married and uses a van only for business. Of course, your situation and figures will be different as this is only a guide to show you how the process works.

As you work through each section you will be able to complete the draft business and household pull out sheet at the centre of this pack. You can then use the master copy (see page 45) to copy and send to your creditors.

If you are a director of a limited company, then you should keep the business budget separate from your household budget.

You should still complete the household budget as it may allow you to reduce the salary level you are drawing from the company in order to keep it solvent and increase its ability to pay creditors, but only if you can afford to do so whilst still having enough money to cover your essential living costs. It is particularly important to complete and use both budgets where there are personal guarantees.

If you have problems working out your business and household budget, or any other questions, **phone us for advice.**

STAGES 1-3: BUSINESS BUDGET

STAGE 1: Income

STAGE 2: Costs

STAGE 3: Drawings

Now turn to the centre pages of this pack where you will find the pull out draft business and household budget sheet.

Carefully detach this from the pack, this will be your working copy and we suggest that you use a pencil when completing this so that any errors can be easily corrected.

Further copies are available, free of charge from Business Debtline – **please phone us if these are needed.**

WEEKLY OR MONTHLY?

We suggest that you fill in your budget sheet on a monthly basis. However, if it is easier for you, amend monthly to weekly on the budget sheet.

It is important that you don't mix monthly and weekly figures on the same budget sheet.

To convert weekly figures to monthly

Weekly figure x 52 (weeks) divided by 12 (months).

To convert monthly figures to weekly

Monthly figure x 12 (months) divided by 52 (weeks).

STAGE 1: INCOME

Average receipts per month:

Use your book and bank statements to work out how much money you have taken for sales over the last three months. It is best not to include money for things that you have sold but have not yet been paid for. Only include money you have actually received.

Divide by three to get an average for the month. If your receipts vary widely over the year, it may be necessary to calculate the average over a longer period.

STAGE 2: COSTS

These are **all** the costs of running your business. The list on the business budget gives you an idea of the items that you should include.

Fixed costs

Some costs are fixed – that is, they will be the same amount each month. Put them on your budget first to begin to find out how much it costs to run your business for a month.

If you pay **business rent** quarterly, divide the amount by 3 to get a monthly figure or 13 to get a weekly figure. You may find it easier to budget by paying monthly – ask your landlord or the agent, otherwise put this amount aside for when you need to pay the quarterly bill. Business rates are fixed annually. Ask your council if you can pay over 12 months to help you budget.

Business water rates are also fixed annually. If your water is metered, the cost may be variable depending upon your usage, and you should take an average of your most recent bills. Again, ask if you can pay over 12 months.

Business loan repayments are usually fixed. However, if you are borrowing on a variable rate, repayments may change with changes in the bank interest rate.

Variable Costs

Other costs may vary according to how much trade you have done. These are called variable costs and may include **stock and employee wages – do not include your own drawings at this stage.**

Use your receipts, books and bank statements to work out how much these items have cost over the same three months as the sales figure you worked out earlier, and divide by 3 to convert to monthly or 13 to convert to weekly.

Gas, electricity, metered water and telephone bills are often issued quarterly. Add up the last four quarterly bills and divide by 12 to get a monthly figure or 52 if you are working on weekly figures in your budget. You may find it easier to budget by paying monthly – phone the company to see what can be arranged.

If you use a **vehicle** solely for your business, all the costs can be put in here, such as road tax, insurance, repairs/servicing and petrol. However, if you use your vehicle for both business and social purposes, you will have to divide the costs between your business budget and your household budget in proportion. Petrol for journeys to and from your home and business premises should be included under household.

Convert the annual **transport** costs by dividing it by 12 for monthly and 52 for weekly. Remember to use this figure to put money aside for tax, insurance, repairs/servicing etc. to give you a better chance of affording the ongoing cost of running the vehicle.

VAT

Refer to the enclosed tax sheet for the current rate.

If your business does not have annual sales over the **registration level** quoted on the **tax sheet**, you do not

need to be registered for VAT. If you are already registered for VAT then to de-register, you will need to demonstrate that your turnover will be less than the **de-registration level** over the next 12 months. You could use your budget sheet in this respect.

This tax is payable on all of your sales, unless they are zero-rated or exempt. The tax paid on goods and services you have bought, as shown on the invoices, is your **input tax** and the tax on your sales is your **output tax**. If you have bought more than you have sold, or your taxable sales are zero-rated, your **input tax** will exceed your **output tax** and you will get the difference refunded.

The date on invoices you send or receive is the **tax point**, and this usually determines in which quarter's return they should be included. However, you may apply to your local VAT office to account only for the tax you have actually received, rather than from the date of invoice. This is called "**cash accounting**". You can also recover the tax you have paid on bad debts, instead of waiting for the bankruptcy or liquidation of the debtor.

Use your last quarter's VAT return to work out a monthly average. Unless your business varies widely from quarter to quarter, this is as good a guide as any.

If you have problems understanding VAT, or if you have problems working out your monthly costs or any other questions, **phone us for advice.**

LATE PAYMENTS AND BAD DEBTS

If someone owes you money and they are not paying you, then you should speak to or meet with them to find a resolution.

This may include an instalment arrangement or where there is a dispute, coming to some agreement. Where an invoice is partly disputed you should ask for the non-disputed part to be paid immediately and then resolve the remainder separately. Be careful not to harass the debtor (see page 32 for information on harassment).

If a business owes you money, you may have the right to claim statutory interest from them, **phone us for advice.**

If you cannot recover the debt using a direct approach then you may wish to consider court action (either by yourself or through a solicitor). You could also consider instructing a debt recovery agent. You will need to weigh up the costs of taking any formal action, particularly if the company has a defence or is unable to pay. A good credit control system can considerably reduce the problems of late payment and bad debts.

Although Business Debtline does not deal with debt recovery issues, we do have a factsheet to help those whose debt problems are caused by non/late payment by debtors. Additionally, your local enterprise agency/Business Link may be able to help you set up credit control systems.

WORKING OUT A BUSINESS BUDGET

For a factsheet on

CREDIT CONTROL

please phone us on 0800 197 6026



Bad debts

If you suffer from a bad debt, and are registered for VAT, then you may reclaim the VAT on the debt once it has been due for more than six months and has been written off in your accounts.

STAGE 3: DRAWINGS

When you deduct your average monthly costs from your average monthly receipts, you have a figure for **profit before tax**. In order to work out how much you can afford to draw from the business each month, it is wise to do a **rough calculation** of how much tax you will have to pay and to keep this amount aside for when the tax bill comes in. You can also **roughly** work out how much national insurance you will have to pay.

If you are a sole trader or in a partnership, you are taxed on profit before drawings, not how much (or little) you draw from the business. The tax position is different for limited companies – phone us for advice.

It is our experience at Business Debtline that many self-employed people get into difficulty paying their income tax and national insurance because they haven't budgeted for it as a "cost of trading" before they draw money for themselves. If you do not take into account income tax and national insurance, this may give a false impression that you can earn more from your business than is actually possible.

As tax allowances change on a regular basis, we have enclosed an up-to-date tax sheet. **If you are using the self-help pack some months after it was sent to you, please phone us to ensure that you are using the most up-to-date tax sheet.**

We have also enclosed a separate sheet on how to calculate income tax and national insurance at the current rates.

Please phone us if there isn't a copy with this pack or if you are using this pack some months after having originally received it.

Self-Assessment – Income Tax

Self-assessment was introduced from April 1996. Requirements include keeping proper records, completion of a new style tax return and payments on account. It is important that you are familiar with the requirements and timescales for sending in the return and making tax payments as there are fines for late returns and payments.

If you have problems calculating your estimated income tax and national insurance or have any queries on self-assessment, phone us for advice.

When you have worked out your estimated income tax and national insurance, the next stage is to see if the amount **available for drawings** is enough to cover your essential living expenses i.e. your **monthly outgoings** as shown in the **household budget**. Before doing this, you should first see if there are ways to increase your income which is described in the next section of this pack. Any other additional sources of income can then also be included in your household budget.

If there is nothing left for drawings, phone us for advice.

INCREASING YOUR INCOME

Lots of people are in debt because they don't receive all the money they are entitled to. Before you work out your household budget (see page 11), use this section to see if you can increase your income.

BENEFITS AND TAX CREDITS

There are a range of different types of benefits which you might be entitled to receive. This will depend on your particular circumstances. Some benefits are based on the **national insurance contributions** you have paid. These include contributory jobseeker's allowance, incapacity benefit, pensions and maternity benefits.

Other benefits are means tested. This means the amount of help you get depends on how much money you already have coming in to your home. There are also limits on the amount of savings you are allowed to have and still claim. These benefits "top up" any income you already have. You do not have to have paid national insurance contributions to claim them.

INCOME BASED JOBSEEKER'S ALLOWANCE

This is for people working less than 16 hours per week who are signing on for work. Whilst it is more difficult for someone who is self-employed to establish the number of hours a week they work than it is if you are in employment, if you supply full details to the Department for Work and Pensions (DWP), you may be able to claim this benefit rather than ceasing to trade altogether. It can also ease the transition in running your business down and looking for employment if this is your choice. The DWP would expect you to take up full-time employment if offered to you.

INCOME SUPPORT

This is for people who do not have to sign on for work (e.g. because they are sick or caring for someone).

PENSION CREDIT

This replaces income support (minimum income guarantee) from October 2003. You can claim if you are 60 or over. The amount you are entitled to depends on your income. There is an extra credit called "savings credit," if you or your partner are 65 or over. This rewards you for having moderate savings. The amount you get will depend on how much money you have saved.

WORKING TAX CREDIT

Working tax credit can be paid on top of your wages if you are on a low income. It replaced working families' tax credit and disabled person's tax credit in April 2003. Many self-employed people are not aware that they can claim this benefit. There are several ways in which you can qualify. These include:

- If you or your partner are employed or self-employed for more than 16 hours per week and are bringing up one or more children. If you qualify by this route, the credit can also help with childcare costs in certain circumstances
- If you or your partner are employed or self-employed for more than 16 hours per week and have a disability that creates a disadvantage in getting a job
- If you or your partner started work in the last three months and are over 25 years of age **and** are employed or self-employed for 30 hours per week or more, **or** over 50 years of age **and** employed or self-employed for 16 hours or more, and in either case, have received income support, jobseeker's allowance or incapacity benefit within the last six months.

CHILD TAX CREDIT

Child tax credit is also available if you have responsibility for children under 16 (or under 19 and in full-time education). It can be paid to individuals who are in or out of work, including the self-employed. The amount you get depends on your income. **For information on tax credits ring the tax credit helpline on 0845 300 3900.**

EDUCATION MAINTENANCE ALLOWANCE

If you have children aged 16 plus who are staying on at school or college, they may qualify for up to £30 a week, depending upon your household income. **For information ring their helpline on 0808 101 6219.**

HOUSING BENEFIT

You may be able to get help with paying rent on your domestic premises if you are on a low income. Contact your local council's housing benefit office for a form.

INCREASING YOUR INCOME

COUNCIL TAX BENEFIT

You may be able to get help with paying all or part of your council tax if you are on a low income. (See page 18 on council tax)

OTHER BENEFITS

Some benefits are not means tested, nor do you have to have paid any national insurance contributions in order to claim them. These include child benefit if you have dependant children. There are also benefits for people with disabilities such as disability living allowance, attendance allowance and carers' allowance for their carers. Whether you can claim any of these benefits will depend upon the nature of your illness or disability and the effect it has on you.

i INFORMATION
Department for Work and Pensions (DWP).
The benefits agency has become the Department for Work and Pensions which includes the Job Centre Plus network, The Pension Service, The Disability and Carers Service and The Child Support Agency. We sometimes refer to the DWP for short. Working tax credit and child tax credit are dealt with by HM Revenue and Customs.

WORKING OUT A HOUSEHOLD BUDGET

This section explains how to work out a household budget. You will have needed to do the business budget first to work out what you have coming in to the household along with any other forms of income. Use this section to work out what you are spending which will then allow you to see what is left over for creditors.

STAGE 4: HOUSEHOLD INCOME

This should include all the income coming into your household, including not only your drawings from the business (or your net wage if you are a director of a limited company) but also:

- **Your husband, wife, or (not business) partner's wages.** Work out a monthly average of the normal take-home pay. Only include overtime if it is regular. Check with your local tax office that they have the right tax code
 - Any **welfare benefit** such as jobseeker's allowance or income support
 - Any **tax credits** such as working tax credit or child tax credit
 - **Contributions** from other people, such as non-dependant children, who live in your home and pay towards the household expenses (i.e. people over 16, unless in full-time education in which case up to 19). Make sure they pay what it costs to keep them. Also include any maintenance you may receive.
- **Rent.** Put your normal monthly or weekly payment here excluding arrears. Remember to see if you are entitled to any housing benefit.
 - **Council Tax** is usually paid in ten monthly instalments. You may be entitled to benefit if you can show the council that you are on a low income. You will need to apply for a reduction if you are the only adult in your home.
 - **Water Rates.** Most water companies will accept monthly payments. Divide your normal yearly bill by 12 for monthly and put that figure in your budget. You can also ask them if you can pay weekly if this helps you to budget.
 - **Gas and Electricity.** Work out the cost of your bills over the year and divide the total by 12 for monthly and 52 for weekly. Phone the company and ask to pay monthly or weekly to suit your budgeting.

If you are struggling to pay your gas and electricity, the company may suggest that you have a pre-payment meter installed. These meters allow you to pay for the service as you use it and also to collect any arrears outstanding from previous bills.

STAGE 5: HOUSEHOLD OUTGOINGS

Work out with your family how much money you have to pay out each month on essential living expenses. **At this stage don't include any debts or arrears or any credit repayments.**

REMEMBER

This is your budget and should be a reflection of your household outgoings, so be honest with yourself as this forms the basis of your negotiations with your creditors later on.

- **Mortgages and secured loans** are usually paid monthly. Put the **normal** monthly payment for each mortgage on your budget. Do not include arrears at this point.
- If you have an **endowment mortgage**, show the endowment or life assurance monthly premium separately and also enter the amount you pay the mortgage company – usually the interest only part.

Whilst some people find that this method suits their budgeting, if you are on a varying income, as are most self-employed people, there is always the danger that you may not have enough money to “feed” the meter and in effect cut yourself off.

If you have a meter and you feel that you are paying too much, phone the company to check how it has been set and see if it can be re-set to what you can afford.

Provided you have a bank account, paying by a monthly direct debit scheme may entitle you to a discount from the company, subject to your account being up-to-date.

INFORMATION

There is a range of grants available for insulation, draft proofing, central heating and energy advice. You may be able to apply for a Home Energy Efficiency Scheme (HEES) grant depending upon the benefits you receive and your age. In England the schemes include a warm front grant and in Wales, a HEES grant. For more information call these freephone numbers. **0800 316 6011 in England, 0800 316 2815 in Wales**

WORKING OUT A HOUSEHOLD BUDGET

- **Housekeeping** should include food, toiletries, cleaning materials etc and a small amount for entertainment and miscellaneous expenditure. A rough guide would be as follows but please bare in mind that your expenditure may be different:

Single person	£152-£195 per month
Couple	£206-£325 per month
Each child	£87-£152 per month depending on age

Non-dependants such as children who have left school but still live with you or elderly relatives living with you should not be left out as they can make a difference to the cost of housekeeping. Whether or not they make a contribution, calculate their housekeeping costs at £87-£152 per month. When writing to creditors ensure that you advise them of the number of people in the household and also whether they are adults or children.

- **Telephone.** Only include your ongoing bill. You should ask your phone company if you can pay in instalments. BT has a new payment card you can use at the post office or PayPoint outlets to pay towards your next bill. If you have been disconnected, treat the bill as a secondary creditor (see page 28). Ask about budget payments. If you agree a payment plan for your next bill, BT will let you keep an incoming calls only service.
- **Magistrates' court fines.** These are a priority and should be included in your essential outgoings. They are different to county court judgments which should not be included here.
- **TV licence and rental** – You should pay your TV licence as a priority because without one you could be fined in the magistrates' court. There is a 50% reduction if you are registered blind. The licence is free if you are over 75. There are different ways of paying your TV licence:
 - At the post office or by TV licence stamps or at PayPoint outlets in shops.
 - By Direct Debit either monthly or quarterly from your bank account. Contact the TV licensing customer enquiries on 0800 917 1490
 - There is a payment scheme called “cash easy entry” which allows weekly or fortnightly payments if you are on housing benefit, council tax benefit, income support/income based jobseeker's allowance, working tax credit or child tax credit. **Contact the cash easy helpline on 08457 289 289.**

If you rent your TV, include this under “TV licence and rental” on the household budget. If your TV was purchased on credit, don't include the repayments in the budget – these will be included with your secondary debts later on.

- **Travelling expenses.** If you are running a car that is also used for your business, put the proportion of the cost not allowed against business expenses into this section. If you have a second vehicle not used for business, you should include the full cost of running it in this section. In any event, always remember to include road tax, insurance, MOT, servicing and repairs.
- **Hire purchase.** If you need a car for mobility reasons and have bought the car using a hire purchase type agreement, you will need to include the payments in your normal “outgoings” section of your household budget or you may risk losing the car.
- **Clothing** is an essential item and as a rough guide you should include at least £13 to £23 per month in your budget for each person in the household. Only include non-dependants if you pay for their clothing.
- **Pension contributions.** Include any amount you are paying to a private pension i.e. not deducted from a salary.
- **Maintenance.** Include voluntary payments and any payments ordered by the court or child support agency.
- **Prescriptions.** If you cannot claim free prescriptions and regularly need them, you may be able to reduce the cost by buying a prepayment certificate. You should allow for the costs of prescriptions in your budget.
- **Other.** Include any other necessary expenditure and be prepared to explain what these relate to.

There may be other items of expenditure not included on our budget sheet that you consider essential for your household. Include them if you wish but be prepared to defend them if challenged by a creditor or the courts.

REMEMBER

Your household's priority spending may be different from these suggestions. It is your budget, so the figures should be what you feel you need to live on. You may have to live with it for a long time and it is wise not to make it too tight. However, you will need to get your income and outgoings to balance if at all possible.

If your outgoings are more than your income, phone us for advice.

STAGE 6: MONEY FOR CREDITORS

To find out how much money you can offer your creditors each month, take your **HOUSEHOLD OUTGOINGS** from your **HOUSEHOLD TOTAL INCOME**.

To improve the amount available, and particularly if your outgoings are more than your income you should:

- Review your business budget and consider ways of improving the position. For example:
 - You may wish to review your pricing policy and whether or not certain unprofitable lines should be discontinued
 - Look at ways of improving turnover/sales such as direct telephone calls to existing or new targeted customers
 - Ask your suppliers for better prices or to give you discounts. You may wish to consider looking at alternative suppliers
 - You may consider concentrating on your core business which may include selling or stopping part of your business activities
 - Review your business costs to see where some could be cut or reduced
 - If you are owed money you should consider formal credit control and debt recovery procedures. See “Late payment and bad debts” on page 7
- Check to see whether you are entitled to working tax credit, child tax credit, income support, pension credit, housing benefit or council tax benefit. Ask at your local Department for Work and Pensions office, council or local advice centre
- Check that you are spreading out payments on your household bills so you don't have to pay them all at once. Gas, electricity, water and telephone companies usually have budget payment schemes
- See if you can cut down on any of your household outgoings, (but don't cut down on basics like food, gas and electricity) in order to be able to offer even a small amount to your creditors.

If you're having problems with any of the above, phone us for advice.

If your income is more than your outgoings you have an amount of **MONEY FOR CREDITORS**.

If your income is less than your outgoings, you may need to consider whether or not to continue trading (see page 36) or phone us for advice.



INFORMATION

On the next page is an example of a completed business and household budget to give you an idea of how you should fill this in. We refer to it later on when working out offers to your priority and secondary creditors (see page 27).

Remember this is an example only and your figures may differ from this.

BUSINESS & HOUSEHOLD BUDGET

We have devised an example budget for a retailer who is married with two children. He uses a van only for business. Of course, your figures may be very different as this is a guide only.

MONTHLY BUSINESS BUDGET

STAGE 1: INCOME		£
Receipts for 3 months	30,600.00	
Average Receipts per Month (A)	10,200.00	
STAGE 2: COSTS		
Stock Purchases	6,000.00	
Rent	400.00	
Business Rates	230.00	
Loan Repayment	200.00	
Bank Interest	40.00	
Bank Charges	30.00	
Wages/PAYE/Nat Ins	1,015.00	
Water Rates	62.00	
Gas		
Electricity	55.00	
Insurance	25.00	
Transport/Motor Costs	230.00	
Stationery	10.00	
Postage	12.00	
Cleaning/Repairs	18.00	
Telephone	75.00	
VAT	528.00	
Accountant/Professional Fees	50.00	
Other	20.00	
TOTAL COSTS (B)	9,000.00	
STAGE 3: DRAWINGS		
Income Less Costs (A) – (B)	1,200.00	
LESS:		
Estimated Income Tax	153.00	
National Insurance Class 4	63.00	
National Insurance Class 2	9.00	
Total Available for Drawings	975.00	

MONTHLY HOUSEHOLD BUDGET

STAGE 4: HOUSEHOLD INCOME		£
Drawings from Business	975.00	
Salary (Partner)	253.00	
Income Support		
Jobseeker's Allowance		
Child Benefit	123.00	
Tax Credits	114.00	
Non Dependants		
Pension		
Other Benefits		
Other Income		
Total Income (C)	1,465.00	
STAGE 5: OUTGOINGS		£
1st Mortgage/Rent	370.00	
2nd Mortgage	60.00	
Endowment/Life Insurance	45.00	
House Insurance	12.00	
Council Tax	75.00	
Water	25.00	
Gas	40.00	
Electricity	40.00	
Household Expenses	460.00	
Telephone	23.00	
Magistrates' Court Fines		
TV Licence & Rental	10.00	
Travel Expenses	100.00	
Hire Purchase		
Clothing	60.00	
Pension Contributions		
Maintenance		
Prescriptions/Health Costs	7	
Other	10.00	
Total Outgoings (D)	1,337.00	
STAGE 6: MONEY FOR CREDITORS		
Available for creditors (C) – (D)	128.00	

The next sections in the book will explain how you should share any available money to your creditors.

DEALING WITH PRIORITY DEBTS

This section explains what are classed as priority debts and how you should deal with them.

It also explains how to negotiate with creditors and what course of action they may take against you if you fail to do this.

STAGE 7: PRIORITY DEBTS

WHAT ARE PRIORITY DEBTS?

These debts should be tackled first before dealing with secondary debts. Whilst all debts are important, some debts are more important than others. The law gives different creditors different ways of getting their money back. If you don't act quickly some creditors could:

- Take possession of your business premises or home
- Cut off gas, electricity or water supplies to your business or gas and electricity to your home
- Send the bailiffs to take equipment, vehicles, furniture or other goods from your business or home (this is called **distrain**)
- Ask the magistrates' court to send you to prison.

These are priority debts. It is important to use your MONEY FOR CREDITORS to make agreements to settle these debts first. Be careful not to give preference to family, friends etc, or other obviously non-priority creditors since you could be committing a legal offence in the event of bankruptcy or liquidation. (See page 37)

If you are in doubt, phone us for further advice.

Creditors can take action on some priority debts without going to court first, for example, gas, electricity, VAT, income tax and your business landlord.

Your other priority creditors can take action against you only after court procedures. **But don't panic**; you will always be given warning, and **provided you act quickly** may be able to stop these things happening.

The debts where these things could happen if you delay too long are:

Debt	See page	Action against you
<i>Business rent arrears</i>	page 16	Repossession/distrain/eviction
<i>Mortgage/rent arrears</i>	page 16	Repossession/eviction
<i>Business rates/council tax arrears</i>	pages 16 and 18	Distrain/imprisonment
<i>Water, gas, electricity arrears</i>	page 20	Supply cut off (note: disconnection of water supply applies to commercial premises only)
<i>Income tax arrears</i>	page 21	Distrain/bankruptcy
<i>VAT arrears</i>	page 22	Distrain/bankruptcy
<i>Unpaid magistrates' court fines</i>	page 22	Imprisonment/distrain
<i>National insurance arrears</i>	page 22	Distrain/bankruptcy
<i>Maintenance arrears</i>	page 23	Imprisonment/distrain
<i>Hire purchase arrears</i>	page 24	Repossession of the HP goods
<i>Major suppliers</i>	page 24	Key supplies stopped/court action/bankruptcy

DEALING WITH PRIORITY DEBTS

MORTGAGE ARREARS

The most important priority for most people is to protect their home so we have prepared a separate factsheet entitled "Dealing with domestic mortgage arrears". **Please phone us for a copy.**

If you are in arrears you should immediately contact your lender and discuss the options available. These will normally include:

- Instalment arrangements to pay a part of the arrears off each month (on top of the normal monthly repayment)
- Payment/capital holidays
- Conversion from an endowment mortgage to a repayment mortgage
- Adding the arrears to the mortgage, called "capitalising" the arrears, (more likely if the value of the property is a lot more than the total amount of your mortgage)
- Increasing the mortgage term
- Paying off the interest only. If you are on a repayment mortgage you could ask the lender to accept a monthly payment to cover only the interest part of the normal monthly repayment, usually for a temporary period
- Increasing your income (see page 9)
- Mortgage rescue schemes. Some lenders operate schemes where they buy back all or part of your home and allow you to remain there as a tenant or shared owner. Contact your lender to see if they run a scheme, or alternatively ask the Housing Corporation for details of local housing associations who may run a scheme, and ask your local council housing department.

If you are unable to afford your mortgage you will need to increase your income or may consider selling your home and seeking alternative accommodation. **Phone us for advice.**

For a factsheet on
DOMESTIC MORTGAGE ARREARS
please phone us on 0800 197 6026



DOMESTIC RENT ARREARS

Your rights as a domestic tenant will depend on what type of tenancy you have. This can be made more complicated if your premises are for combined domestic and business use. (In this case you may only have a business lease covering the whole of the property and in effect might not have the same rights as a domestic tenant, see business rent arrears below). We have a separate factsheet entitled "Domestic rent arrears". **Please phone us for a copy.**

You should contact your landlord as soon as possible to make an arrangement to pay towards the arrears on top of your normal monthly payment. You should also check to see if you are entitled to claim housing benefit. If your landlord takes further action against you, **phone us for advice.**

For a factsheet on
DOMESTIC RENT ARREARS
please phone us on 0800 197 6026



BUSINESS RENT ARREARS

Your landlord can send a bailiff to your business premises (or indeed attend in person) to remove your stock and equipment without a court order, if you do not keep up payments of your rent. It is important, therefore, to let the landlord know if you are in difficulties and to come to an arrangement to pay off any arrears. Your landlord could also seek a court order for eviction, if you cannot make payments. Much will depend upon your relationship with the landlord and the length of any lease you may have.

If you cease trading, you may still be liable for rent. **Check the terms of your lease.** If you need help in negotiating with your landlord, **phone us for advice.**

For a factsheet on
BUSINESS LEASES
please phone us on 0800 197 6026



BUSINESS RATES

The amount of business rates (sometimes referred to as non domestic rates) payable for business premises is based on the valuation carried out by the district valuer. Appeals against the rateable value should be made within six months of occupation of the business premises, or if changes are made to the building. It is advisable to obtain professional advice from a specialist in this field if an appeal is contemplated – **phone your council's valuation office** for a list of reputable firms in your area and be very careful when dealing with firms who approach you first.

You should not stop paying business rates just because you feel that the valuation is wrong. You are obliged to pay at the fixed rate until the valuation is changed.

Reliefs. It may be possible for your business to reduce the amount payable to business rates via a range of different reliefs, including the small business rate relief effective from 1 April 2005. You should apply to your local authority.

You may even be able to ask them to grant up to 100% relief if you can demonstrate that you would suffer severe hardship and that it is in the interests of other ratepayers for them to do so. This would usually be if you supply an important service to the local community and only in extreme circumstances.



INFORMATION

For the range of different reliefs available see the official government website, www.mybusinessrates.gov.uk

If you cease trading, but are still liable for the lease, you may still be liable for business rates. (see page 36).

For a factsheet on
BUSINESS RATES

please phone us on 0800 197 6026



What happens if I don't pay my business rates?

The council will usually tell you to pay your bill in 10 monthly instalments or they may accept weekly payments. If you find at any time that you can't pay the full monthly instalment don't just stop paying!

- Keep paying what you can afford.
- Contact the council and try to come to an arrangement. Use your business and household budget to help explain your situation.

Liability order

If you don't keep to any payment arrangement you make with the council they will ask the magistrates' court for a **liability order** for the full amount they say you owe plus court costs. This says that you are due to pay your business rates and have not paid.

The court **must** issue the liability order unless:

- The council have not gone through the proper procedures
- You have paid the amount owed
- The amount has been incorrectly calculated
- The name on the summons is wrong.

If one of these applies to you, tell the council immediately and attend any court hearing.

Such matters as appeals against valuations, exemption from rates, or financial hardship are not a valid defence against the issue of a liability order.

Methods of enforcement

If you do not make an agreement with your council or don't keep up the agreed payments, they can use a number of ways to try and make you pay.



INFORMATION

In cases of exceptional hardship the council has the power to write off the debt. They will only do this very rarely. **Phone us for advice.**

Distraint for non-payment of business rates

The council can ask bailiffs to visit your business premises and take goods, which may be sold to pay off your debt. If you are a sole trader or in a partnership then they can also visit your home.

The council must send you a letter giving you two weeks notice that bailiffs have been instructed to visit your business and/or your home and telling you how much you still owe under the liability order.

The bailiffs must carry written authorisation from the council and are not allowed to take certain basic household goods. They should not take:

- Clothing, bedding, furniture, household equipment and provisions **necessary** for satisfying the basic domestic needs of your family.

But the bailiffs can take **ANYTHING ELSE YOU OWN** (or jointly own). This may include tools of the trade, business stock and cash registers. The bailiffs do not normally take goods on their first visit. They will usually list items that will be collected a few days later. This is known as a **walking possession** order, which you will be asked to sign. The bailiffs can then re-enter by force, if necessary, to remove goods subject to the walking possession order.

The bailiffs should only list sufficient items that, when sold at auction, will pay off the amount of the court order and their own charges (which are set out in regulations). But remember, the resale value of second-hand goods will not be nearly as much as you might have paid for them in the first place.

They should only take goods owned by you (or jointly with you). They cannot take goods owned by someone else including those that are rented or on hire purchase. Be ready to prove this (if this is the case) by providing them with finance agreements and receipts etc.

The bailiffs cannot force their way into your home unless you have let them in before. You should not sign any papers the bailiffs may post through your door, otherwise you may be charged extra costs and the bailiffs may try to enter by force.

Contact the council and the bailiffs and try to make an arrangement to pay. You should do this as soon as possible

DEALING WITH PRIORITY DEBTS

because you will be charged costs for each time the bailiffs visit your home. Use your business and household budget to support your offer and **start paying what you can afford, no matter how little, immediately whether they agree to your offer or not.** If the bailiffs will not accept your offer of payment then ask the council to take the account back from the bailiffs to let you pay the council directly.

If the bailiffs try to break in or they threaten you, **phone us for advice.**

If the bailiffs are unable to recover sufficient goods to cover the debt, then they will usually refer the matter back to the council who will then consider other methods of enforcement.

Insolvency

Where a liability order has been obtained, the council can commence bankruptcy (sole trader/partnership) or company winding up proceedings if the debt is £750 or more. If this is threatened, **phone us for advice.**

Imprisonment

If the council has tried to use bailiffs, and your business rates have still not been paid in full, they may apply to the magistrates' court for an order for you to be sent to prison ("committal"). The court is unlikely to send you to prison if you have not paid because you don't have enough money. The court would have to show either:

- You have deliberately refused to pay (known as "wilful refusal")

or

- You could afford to pay but did not (known as "culpable neglect").

You **must** attend the hearing and show the court your business and household budget to explain why you have not been able to pay. Take along any evidence to show you have tried to pay what you could afford.



IMPORTANT

It is very important to get advice before the hearing. There may be a local advice agency that can help you, or **phone us for advice.** If you have not been able to get help before the hearing you can ask for help from the duty solicitor in the court on the day of the hearing.

In very exceptional circumstances the court may order your business rates or council tax arrears to be written off. You should ask for this if you cannot afford to pay, have lots of other debts, and are in severe hardship. Otherwise, they are likely to suspend committal on terms that you pay an amount each month or week until the debt is paid. If you do not pay this amount regularly you will have to go to court again and may be sent to prison for up to three months. Once the full term has been served the debt becomes irrecoverable. The

issue of a committal order, whether suspended or not makes the debt unenforceable by any other method.

If you find you can't pay what the court has ordered, keep paying what you can afford and apply to the court to reduce the amount you have to pay. Phone us for further advice.

COUNCIL TAX

The amount of council tax you pay is based on two things:

- **The value of your home** – Check with your local council to see which band your home is in, A to H. If you think it is wrong, appeal to the council listing officer
- **The number of adults who live in your home and their status.** For sole occupants there is a 25% discount.

Who pays what?

Only people over 18 are required to pay the bill. If there is more than one person over 18 living in your home, the owner will normally have to pay the bill. Joint tenants and owners may have to pay even if their names are not on the bill. If you are married or you live with someone as husband and wife both **you and your partner** can be made to pay.

Sometimes the owner of a house will be responsible for the bill even if they don't live there. This is in homes of "multiple occupation" (e.g. bed-sits). If you are not sure who is responsible for the bill **phone us for advice.**

Can I reduce my bill?

You may get a reduction if someone living in the house has a disability, and your home has had certain adaptations made for that person. You should apply to the council for this.

You may get a discount if:

- You are the only adult in the house or
- You share your house with people who are not taken into account, such as:
 - A full-time student or student nurse
 - Someone with a mental disability who is getting certain disability benefits
 - An apprentice or people on certain youth training schemes

You may be able to claim council tax benefit if:

- You are on a low income with less than £16,000 savings or
- You are on income support, pension credit, jobseeker's allowance or other benefits.

You may get help with paying all or some of the bill by claiming council tax benefit. Contact your local council for an application form.

You may be able to claim a rebate called second adult rebate if:

- You share your house with someone on a low income, who does not pay rent **and** is not your husband, wife or partner and **you** don't already get a discount for them
- If you are in this situation the council should work out if you are better off claiming your own council tax benefit or getting the second adult rebate.



EXTRA HELP

If you feel your council tax benefit has been wrongly worked out you can ask the council for a review in writing. If you are not happy with the outcome you can appeal against the decision to an independent tribunal within a month of the review decision, but only if you think a mistake has been made. For further information contact a local welfare rights agency or **phone us for advice**.



INFORMATION

If you feel that your council tax bill has been wrongly worked out you can appeal to a local valuation office agency. The address should be on your council tax bill.

What happens if I don't pay council tax?

If you find at any time that you can't pay the full monthly instalment don't just stop paying!

- If your circumstances have changed you may now qualify for council tax benefit, so claim now.
- Keep paying what you can afford, no matter how little this is.
- Contact the council and try to come to an arrangement. Use your business and household budget to help explain your situation.

Liability order

As with business rates, if you don't keep to any payment arrangement you make with the council they will ask the magistrates' court for a liability order for the full amount they say you owe plus court costs. This says that you are due to pay your council tax and have not paid.

The court **must** issue the liability order unless:

- The council has not gone through the proper procedures
- You have paid the amount owed
- The name on the summons is wrong.

If one of these applies to you, tell the council immediately and attend any court hearings. You should get 14 days notice of the hearing.

You can ask the court to adjourn (put off) the liability order hearing if:

- You have applied for council tax benefit, or
- You have appealed to a valuation tribunal because you don't agree that you are liable or you don't agree with the amount of the bill.

The court does not have to adjourn the hearing but they may agree to it.



INFORMATION

If the council tax debt is over six years old and the council have not taken you to court for a liability order within six years of you becoming due to pay, they cannot continue to collect the debt. This depends upon when the council served a demand notice on you. If you think this may apply to you, **phone us for advice**.

Methods of enforcement

If you do not make an agreement with your council or don't keep up the agreed payments, they can use a number of ways to try and make you pay.

The council can demand that you and your husband, wife or partner give them details of your financial circumstances. **You can be fined for not giving this information.**

The council can enforce the liability through the same methods as business rates such as distraint and imprisonment (see page 17). There are some differences worth noting; if distraint is used for council tax arrears, the bailiffs can not take tools of the trade. However, unlike business rates there are additional methods of enforcement for council tax:

Charging orders

If the debt is for £1,000 or more then the council can apply to the county court for a charge on your business property or your home. This means the debt is "secured" on your house/business like a mortgage and so may put your house/business at risk. If the council threaten to do this, **phone us for advice**.

Attachment of earnings

If you cease trading and find employment, the council can order your employer to take a fixed amount from your wages to pay your council tax arrears. Deductions are made on a sliding scale depending on how much you earn. If you can show this is causing you extreme hardship, you may be able to make a different payment arrangement with the council for a lower amount.

DEALING WITH PRIORITY DEBTS

Deductions from income support, pension credit or jobseeker's allowance

If you start claiming any of these benefits, you can ask the Department for Work and Pensions (DWP) to take a standard amount each week from your allowance to pay for the council tax arrears. If they agree, they should not take any further action against you whilst the money is being taken directly from your benefit.

Again, it is very important that you get advice before any hearing, and no matter what is said to you, you should always attend the hearing in person.

REMEMBER

Because of the council's powers to make you pay business rates and council tax, you must treat it as a priority debt. If you can't pay the full amount:

- Contact your council and make an arrangement to pay
- Check the bill has been worked out correctly
- Claim council tax benefit
- Pay what you can afford
- If you have credit debts, use your business and household budget to arrange reduced payments to those creditors. See the section "Offers to Secondary Creditors" for advice on how to do this on pages 29-31.

For a factsheet on **BAILIFFS AND THE COUNCIL TAX** please phone us on 0800 197 6026



WATER RATES

Your water company can, as a last resort, cut off your supply to your business premises if you do not pay your bills. They cannot disconnect a domestic water supply. However, if you are in difficulty, ask to pay your bills weekly, fortnightly or monthly to suit your budgeting. If you have arrears, you will normally be expected to repay them before the next bill is sent. Use your business and household budget to make arrangements to pay the arrears. You should allow for the current water rates in the outgoings section of your budget as this is an ongoing bill. You can then make an offer towards the arrears as a secondary creditor for domestic supply as you cannot be cut off.

If you don't pay, the water company will send you a county court claim form (see page 33 for details of court procedures). The court is likely to let you pay a monthly amount that you can afford. However, you will be expected to pay next year's water bill within the normal time limit. Remember to say which bill the payment is for when making the payment – be careful not to get payment books for different years mixed up.

For non-domestic premises, your water company will write to give you a date when your water will be cut off. Contact them immediately and start paying for your present bill **plus** an amount you can afford off the arrears. You will usually be able to make an arrangement to pay off the arrears even at this stage.

If at this stage your water company ask you to pay more than you can afford, phone us for advice.



WARNING

In extreme cases, the environmental risk of your business being without water could lead to you being evicted whether you own or rent.



MORE INFORMATION

If you have a complaint about the way your water company is dealing with your arrears, contact OFWAT, the regulatory body for water. OFWAT guidelines say the company should take your circumstances into account when making an arrangement to pay. OFWAT has regional customer services committees called WaterVoice who will look in to your complaint about the water company. See your local phone book for your regional contact number.

GAS AND ELECTRICITY ARREARS

The gas and electricity companies can cut off your supply in a few weeks if you don't pay them. **No court is involved in this decision.** It's important to contact them to make payment arrangements as soon as you know you are going to have problems. Phone or write to the company.

How do I make an arrangement?

Contact the company and explain your problem. If the first person you speak to is unhelpful, ask to speak to someone more senior. Use your business and household budget to support your offer of payment. This must cover the cost of the fuel you are using and an amount off the arrears. **Start paying what you have offered** even if the company does not agree to your offer.

If you have bought things such as a cooker, fire or video from the company and you are paying for them through a credit agreement, ask the company to separate your fuel account from your credit account. **Your fuel supply cannot be cut off because of arrears on the credit account. (see page 28 for how to deal with this secondary debt).**

Ask the company for a copy of their code of practice. This explains your rights and the extra protection for pensioners and people on low incomes. **If you have problems making an arrangement with the company, phone us for advice.**

How do I avoid having my electricity/gas cut off?

You must keep paying for the fuel you are using and an amount off your debt even while you are trying to make an arrangement.

Add up your last four bills to find out how much you use in a year and divide by 12 to work out how much fuel you use each month. The company should accept the following:

- **Instalments.** Payment of the gas or electricity bill by weekly or monthly instalments sufficient to pay off the whole amount before the next quarterly bill arrives
- **Budget Plan.** Payment for the gas or electricity you are continuing to use, plus an amount towards the arrears. The company should let you pay your debt weekly or monthly at a rate you can afford, even if this means spreading the arrears over a long period of time
- **Meter.** Payment for continuing use and an amount you can afford off the arrears by way of a token, card or coin meter. Debt repayment/recalibration of the meter should be based on what you can afford. If the company has set the meter to take a higher amount than you can afford, send them a copy of your budget and ask them to reduce the meter setting to what you can afford.

REMEMBER

If you have problems making an arrangement with the company, **phone us for advice.**

Switching suppliers

If you feel that your bills are too high you may want to consider changing them for an alternative. Before you do so, you can get price comparisons to see who will be cheaper for you. Contact Energywatch or see their website www.energywatch.org.uk.

MORE INFORMATION

If you have a complaint about how your fuel company is dealing with your arrears you can contact Energywatch on **08459 060708**. Energywatch deals with complaints for OFGEM, the regulatory body for gas and electricity. Energywatch uses OFGEM guidelines that say the fuel company should take your circumstances into account when making an arrangement to pay. The address for Energywatch is listed at the back of this pack.

HM REVENUE AND CUSTOMS

The Inland Revenue and HM Customs and Excise have now been merged into one organisation, HM Revenue and Customs, (HMRC). This new department still has the same powers as before but can now deal with both tax and VAT debts.

INCOME TAX ARREARS

HMRC can take a number of enforcement methods to recover an unpaid tax debt. These include:

- **Distress without a court order:** HMRC does not require a court order to visit your business premises to take away your stock and equipment, up to the value of the debt. If there are not enough goods at your business premises, they can go to your home and take goods from there (unless you trade as a limited company). If you refuse HMRC entry they could obtain a warrant to break in but this is rare. They are more likely to take you to the county court or start bankruptcy proceedings
- **County court action:** where they will obtain a judgment against you giving them access to enforcement methods such as distress, if not done without a court order, charging orders or attachment of earnings if you are employed
- **Use the magistrates' court:** where the amount owed is less than £2,000. A summons to a hearing would be issued which you should attend with your business and household budget to ask to pay by instalments. If you do not keep to these instalments a further hearing would be arranged to decide whether you should be sent to prison. For this they would have to show you are guilty of 'wilful refusal' or 'culpable neglect.' (See the imprisonment section on business rates on page 18). The court may not decide to send you to prison but it cannot write off the debt
- **Bankruptcy:** If the debt is for £750 or more HMRC may start bankruptcy proceedings against you. (See insolvency on page 36).

You must contact them as early as possible to arrange time to pay any arrears. Make an offer to pay off the debt at a rate you can afford, and use your business and household budget to support your offer. Even if your offer is refused, start paying what you can afford, no matter how small the amount. HMRC operates a complaints procedure to ask for your offer to be reviewed if you think it has been unfairly rejected.

If the debt is based upon a **determination** that you think is incorrect, you must submit your return as soon as possible. You should do this even if you think you may be too late. This may mean the debt is reduced and will also stop you being charged penalties for not submitting your return. Tax paid late will attract interest. **Phone us for advice.**

DEALING WITH PRIORITY DEBTS

VAT

As with income tax, HMRC can take action without a court order and can take away stock and equipment at your business premises, or if that fails, at your home address (unless the debt is owed by a limited company).

You will usually have to pay any arrears in full before the next VAT return is due. Penalties will be added to the bill for late payment. The officer will usually look at your past record of VAT payments before deciding what payments to accept so **start paying what you can immediately no matter how small the amount.**

If the arrears are based upon an estimated assessment, you must submit an accurate return, which could reduce the bill. Even if you cannot pay, you may avoid a surcharge for not making a return.

If HMRC cannot recover the money owed by taking away your goods, they will usually apply for a bankruptcy order. However, if you cease trading inform HMRC, or apply to deregister if your turnover is less than the deregistration limit shown on the enclosed **tax sheet**. It is then often easier to come to arrangements to pay off arrears by instalments. **Phone us for advice.**



WARNING

HM Revenue and Customs will not tolerate businesses continuing to accrue tax arrears without a payment plan and will often commence bankruptcy proceedings even if you have no assets, with a view to stopping you trading altogether.

NATIONAL INSURANCE ARREARS (NICs)

There are four classes of National Insurance Contributions (NICs):

- Class 1 NICs are deducted from an employee's wages and paid by the employer along with income tax under PAYE
- Class 2 NICs are paid at a flat weekly rate by self-employed people (see the enclosed tax sheet for the current amount)
- Class 3 NICs are voluntary contributions paid to help people qualify for retirement pension and certain benefits.
- Class 4 NICs are paid by self-employed people in addition to class 2 NICs if earnings are above a certain threshold (see the enclosed tax sheet).

Class 1 and 4 NICs are collected by HMRC in the same way as income tax arrears (see page 21)

Class 2 NICs are collected by the National Insurance Contributions Office and whilst they technically have the same powers as with Class 1 and 4 NICs, current policy seems to be to start proceedings through the county court (see page 33, What if a Creditor Takes Court Action?)

TAX CREDIT OVERPAYMENTS

In some circumstances you may be told that you have been overpaid a particular benefit e.g. working tax credit. If you do not agree you may be able to appeal. Overpayments can be recovered by different means including deductions from ongoing claims or even through the same enforcement methods as a tax debt. If recovery of a benefit will cause you hardship you may be able to reduce the amount at which you pay it back. You should speak to HMRC and ask for time to pay it back at a rate you can afford. In cases of extreme hardship they can consider writing off all or part of the debt. **Phone us for advice if you are in this situation.**

MAGISTRATES' COURT FINES

The magistrates' court may order you to pay a fine, for example for a driving offence, not having a television licence or other offence. You must treat a magistrates' court fine as a priority debt because you could be sent to prison if you do not pay. Your financial circumstances should be taken in to account when the court decides the instalments for paying the fine. You can be fined if you do not give the court details of your income and outgoings when ordered to do so. The court can make deductions from your wages or from your benefits either when they set the fine or if you fall behind with payments. You must contact the court if you cannot afford to pay the amount the court fixes or you cannot pay because your circumstances have changed. They may be able to lower the amount. If you have to go to a court hearing, take a copy of your business and household budget with you.

What if I don't pay?

If you are in arrears and do not make any arrangement with the court they may try to:

- Use private bailiffs to seize goods and sell them. **You do not have to let the bailiffs in.** The bailiffs cannot force their way into your home unless you have let them in before. They could however take your vehicle. From November 1999, they should not take a vehicle needed for employment or business. They must leave clothing and basic household items. To make arrangements to pay you will need to contact the bailiffs directly, since the court will no longer accept payments from you
- Make deductions of £5.00 a week from your income support, pension credit, income based or contributions-based jobseeker's allowance

- Make direct deductions from your wages under an attachment of earnings order if you are employed
- Order you to be sent to prison. There will be a hearing before this happens, which you must attend and take a copy of your business and household budget with you. If you explain why you have not paid and make a new offer to pay by instalments the court may suspend the arrest warrant.

i INFORMATION

Some magistrates' courts are part of a pilot scheme which gives them increased powers to enforce fines. These are being rolled out nationally in 2005. Powers include:

- Increasing the amount you pay by 25% or 50% if you do not pay
- Clamping a vehicle registered in your name
- Including a fine on credit reference files which will affect your ability to get credit
- Ordering you to do unpaid work instead of paying the fine.

If you want to know if these changes apply in your area, **phone us for advice.**

For a factsheet on
MAGISTRATES' COURT FINES
 please phone us on 0800 197 6026



PARKING PENALTY CHARGES

Many local authorities have decriminalised parking offences and enforce parking penalty charges through the Traffic Enforcement Centre in Northampton County Court. There are special rules that apply if you have this type of parking penalty. You cannot be sent to prison but the local authority can ask the county court to use private bailiffs to try to recover the money. If you have a parking penalty charge, **phone us for advice.**

MAINTENANCE

You can be ordered to pay maintenance either by the court, as part of the separation or divorce process, or by the Child Support Agency.

Maintenance through the court

If the court has ordered you to pay regular payments, you can apply to reduce the payments if you cannot afford them. If you do not pay, the court can order you to attend a hearing to explain why you have not paid. They can give you more time to pay and in exceptional circumstances, write off the arrears.

If the court decides you are deliberately not paying, they may try to:

- Use bailiffs to seize goods and sell them
- Take payments directly from your wages if you are employed
- Order you to be sent to prison.

If you are in arrears you should contact the court immediately and take a copy of your business and household budget to any hearings and explain why you cannot pay the full amount. The court may reduce the amount you have to pay.

Maintenance through the Child Support Agency

The Child Support Agency (CSA) can decide what maintenance you should pay and then collect it. This is most likely if your ex-partner is on income support or income-based jobseeker's allowance. They will decide the amount by using a set formula. If you do not pay, the CSA can collect it direct from your wages if you are employed, on income support, pension credit or jobseeker's allowance without a court order.

If they are unable to do this, the CSA can ask the magistrates' court for a liability order. When this has happened they may try to:

- Use bailiffs to seize goods and sell them
- Get a charge on your property which means your home could be sold if you do not pay
- Seize money from your bank account
- Ask the court to send you to prison which can be for up to six weeks, but the court will only do this if it thinks you are deliberately not paying
- Ask the court to take away your driving license for up to two years.

DEALING WITH PRIORITY DEBTS

If you are in arrears, contact the CSA to make an arrangement to pay. They may accept an amount on top of your normal payment to clear the arrears over an extended period of time. Inform them of any changes of circumstances immediately.

HIRE PURCHASE

Depending on the circumstances, Hire Purchase may be a priority or a secondary debt.

Hire Purchase (HP) or Conditional Sale?

Don't assume that all goods bought on credit are on HP. You can buy goods on all sorts of different credit agreements and the difference is important.

Creditors can only take back goods if you have a HP or conditional sale agreement. This is because you are not the owner of the goods until you have made the final payment.



WARNING

The company does not have to go to court to take back goods if you have paid less than a third of the total charge for credit. If you have paid more than this, the creditor will need a county court order.

It is a criminal offence to sell goods on HP, without the consent of the HP company.

With nearly all other credit agreements you own the goods and the only action creditors can take is to start action in the county court to get their money back (see page 33).

If you are not sure if your credit agreement is HP, read it, ask your creditor or **phone us for advice**. If it is called a HP or Conditional Sale agreement your creditor may have the right to repossess the goods.

If you wish to keep the goods you will need to demonstrate that you can pay the normal payments plus something towards the arrears **or**

In certain circumstances repossession of the goods can be suspended on terms where payments are less than the original agreement. You would need to show that this is all you can afford and explain why it is important that you keep the goods i.e. to continue trading.

If you no longer need the goods and wish to hand them back you may be able to do this without paying anything further if you have already paid over half of the total charge for credit and dependent on the state of the goods. Look at your agreement for this amount. If you have not paid half of this amount, a shortfall will be left to pay which would then be treated as a secondary debt, see page 28.

Issues around Hire Purchase/Conditional Sale can be complex, phone us for advice.

For a factsheet on
**HOW TO DEAL WITH
HIRE PURCHASE DEBTS**
please phone us on 0800 197 6026



EQUIPMENT LEASES

As with HP, depending upon circumstances, equipment leases may be priority or secondary debts.

Check the agreement very carefully to see whether you have the right to keep the equipment at the end of the lease, as with a lease/purchase agreement, or if you will have to pay for the lease of the equipment for all of the period of the lease, whether you return the equipment or not. Check with the leasing company if the debt will be reduced if you return the equipment.

If you have the right to keep the equipment or if it is essential to you in order to keep trading, then arrears should be treated as a priority debt.



WARNING

It is a criminal offence to sell leased equipment without the consent of the leasing company. **Phone us for advice.**

MAJOR SUPPLIERS

If you cannot get suppliers from any other source, you may wish to treat the trade supplier as a priority creditor. If you can use another supplier, you may then be able to treat them as a secondary creditor. However, if you owe suppliers £750 or more they may threaten you with bankruptcy proceedings. **Phone us for advice if you are not sure.**

BANK OVERDRAFTS AND LOANS

If your bank account regularly exceeds any arranged overdraft limit, not only will you incur penalty interest and charges, but you also run the risk of having the overdraft limit cancelled or not renewed when the agreement expires.

Management of your business and household finances can become chaotic if you lose control of your bank account. Unpaid cheques, direct debits and standing orders will make your debt problem worse and deposits made into your bank account may be absorbed into paying interest and bank charges rather than covering payments you need to make.

You may find it easier to convert your overdraft into a loan but remember, you will lose the flexibility of an overdraft as it is often a condition that your current account operates in credit only. You will also be committed to a monthly repayment – make sure you can afford this and make sure the interest rate is no higher than the overdraft rate.



EXTRA HELP

If your bank is trying to persuade you to give security (i.e. against your property) for a loan or overdraft that is presently unsecured, **phone us for advice.**

If you cannot meet your current loan repayments or are in danger of going over your overdraft limit, it is important that you speak to your bank and agree an arrangement. This may include a restructuring or rescheduling of current borrowing. If you are able to, it is generally easier to deal directly with your own branch (and manager/staff) than deal with a central debt recovery unit. If you are able to reduce the balance to within the overdraft limit this may reduce borrowing charges.

Phone us for advice if the bank threatens to close your account or send it to a debt recovery unit.

Secured or unsecured?

Bank overdrafts and loans may be secured or unsecured:

Secured

This is where the bank has security over some or all of your business assets. In some cases they may also have security over personal assets such as a family home. **A secured loan or overdraft must be treated as a priority debt.** If you are a director of a limited company, you may have signed a personal guarantee that may be supported by a security over your home – this must also be considered as a priority debt.

Unsecured

Loans and overdrafts are unsecured where the lender does not have any security or guarantee. However, depending on the circumstances, you may need to treat these as priority debts if you feel that you cannot get a banking service elsewhere and it is essential in the running of your business.

Phone us if the bank threatens to stop cheques and put restrictions on your account.

NEGOTIATING WITH YOUR BANK

When you are facing debt and cash flow problems, it is essential that you speak to the bank and make an appointment to see them if possible. There are a number of options that you could consider putting to the bank.

Remember, it is important that you have viable proposals to put to the bank when you meet them. This should include a simple business plan, which you can prepare yourself. This does not need to be extensive or have a formal structure, but essentially needs to contain:

- Your business and household budget together with a schedule of your debts (see pages 43 to 46)
- A plan of how you see the business recovering over the next 12 months (at least). This should include a mixture of figures and words
- Include any changes you are making to improve income and reduce costs. **BUT** be realistic, don't make your projections over-optimistic. Base it on facts that you can support
- A proposal on finance arrangements to help with immediate cash problems and to support your new business plan.

Your local enterprise agency may be able to provide help with the preparation of a business plan – phone your local Business Link or Chamber of Commerce for details of what's available in your area.



REMEMBER

You are not preparing a business plan just for the bank – first and foremost this business plan is for your own peace of mind and as such should demonstrate to you that you can trade out of your difficulties and improve your business performance.

Naturally, the proposals you put forward, and the bank's response will depend on your circumstances. **Phone us for advice.**

DEALING WITH PRIORITY DEBTS

REMEMBER

Beware if the bank wishes to convert unsecured borrowing to that secured on your property. Always check the interest rate and any arrangement fees that are to be charged. If you are unable to make the payments on a secured loan, your property will be at risk. If you are considering this option, **phone us for advice.**

It is important that creditors are treated fairly. If the bank will be taking all the money that would be available for your creditors, meaning you may for example not be able to pay some other creditors (especially priority creditors), **phone us for advice.**

Should I consider changing my bank?

Many people ask us this question. This is not as easy as it sounds. Also in our experience it is generally better to stay with your current bank as they know you and are more likely to listen to your problems and help with your proposals. Obviously this is not always the case, and in some circumstances, changing banks may be appropriate.

If your bank will not listen to you and you are losing control of your banking, provided the overdraft and/or loan are unsecured, it may be better to open an account at another bank.

If you have a poor credit history you may find it difficult to open another business bank account. **Any new account should be operated strictly in credit to avoid running up another debt and making your problems worse.**

If you are able to open a new account, you should treat your other bank's overdraft and/or loan as a secondary debt (unless it's secured in which case it is a priority).

REMEMBER

Always try to come to an agreement with your existing bank first. If you are in doubt or you would like more details on any of the above, **phone us for advice.**

Example offers to priority creditors

In our example, the table below shows which priority creditors our retailer has arrears with and examples of the offers he has been able to negotiate with these creditors.

Available money for creditors (E)	£
------------------------------------------	----------

STAGE 7		
Priority creditors (See Pages 15 to 27)	Balance Outstanding £	Monthly Repayments Offer £
Available for creditors		128
Business Rent Arrears	400	40
Domestic Mortgage Arrears		
VAT		
Tax & PAYE		
Business Rates Arrears	300	40
Council Tax Arrears		
Utilities Arrears		
Total Priority Debts	700	80

From the budget sheet on page 14 our retailer has a total of £128 available to pay towards his creditors. He has now negotiated with his priority creditors to pay a total of £80 a month to catch up his arrears.

Remember this is just an example. Your figures may be longer and more complicated.

The next section covers how to work out offers to your secondary creditors.

DEALING WITH SECONDARY CREDITORS

This section explains how to deal with secondary creditors i.e. non priority.

It explains how to calculate how much you should pay towards your secondary creditors if there are funds available to do so. It also explains what course of action they may take and how to deal with this.

STAGE 8: MONEY FOR SECONDARY CREDITORS

What are secondary creditors?

These include lots of different types of debts where the creditor hasn't got extra powers (e.g. they cannot take your home). This means they do not have to be treated as a priority. The most common secondary debts include:

- Credit card debts
- Personal loans with finance companies
- Bank and building society unsecured loans, overdrafts and credit cards. (Remember this may be different for business overdrafts/loans if they are essential for you to keep trading, see page 24)
- Charge cards
- Catalogues
- Personal debts to friends and family
- Doorstep collected loans
- Credit sale agreements
- Trading cheques/vouchers.

Once you have made arrangements with priority creditors, what you have left from your money available to creditors at Stage 6 should be offered to secondary creditors. Work out your money for the secondary debts figure by deducting the amount offered to priority creditors from the Stage 6 figure. See the example on page 30.

Check the name on the bill

Business partners are each liable for all debts incurred by the partnership. This is called "joint and several liability" and is explained more fully on page 40.

A husband and wife are not responsible for each other's debts unless they are in partnership in business, or they both sign the agreement.

People under 18 can only be made to pay for "essential goods and services" bought on credit. Parents are not responsible for their children's debts unless they have signed a guarantee.

If you are a director of a limited company, you will not be personally responsible for the company's debts, unless you have signed a personal guarantee or indemnity. If the Inland Revenue propose to transfer a PAYE liability from the limited company to you as a director, then **phone us for advice.**

Creditors may ask for a guarantor before agreeing to lend money. This means that if the person who has borrowed the money does not pay it back, the guarantor will be asked to pay.

If you have a guarantor for one of your credit debts, or if you are guarantor for someone else, phone us for advice.

INTEREST

All debts have two parts – the money borrowed i.e. the "principal" sum and the interest. Interest is the charge for lending you the money. You will need to find out if interest is still being added to any of your debts.

When you make an offer of repayment to creditors, if this amount is less than the interest being added, your debt will continue to grow, and you won't get anywhere in reducing the amount you owe. **You should ask the creditors to stop charging you any more interest.** See the example letter on page 31.

If some creditors refuse to stop interest, but other creditors agree, mention the names of the creditors who have agreed as a way of trying to persuade those refusing to reconsider. If you cannot reach an agreement with your creditors, then **phone us for advice.**

OFFERS TO SECONDARY CREDITORS

After paying your outgoings and making arrangements to pay your priority debts, there may be nothing left to pay other creditors.

If you have nothing left, say so. Show your creditors by sending them your business and household budget and a letter to back this up. (See our example letter on page 31).

If you have something left, the best way to divide it amongst your creditors is on a pro-rata basis. This is how the court would do it and means that all your creditors get a fair share of what is available in proportion to the amount you owe them and other creditors.



INFORMATION

Don't worry if your offers look very small.

Remember, most creditors would rather you pay a small amount regularly rather than nothing at all or indeed make promises you can't keep to.

Even if a creditor has already taken you to the county court, you should include this amount with the secondary debts and work out the offer of payment in the same way (see page 33) "What if my creditors take court action?"

- Contact all your creditors to find out exactly how much you owe each one.
- Add up all the individual debts to find out how much you owe in total.
- Divide each individual debt by your total.
- Multiply that figure by your money for secondary creditors figure to find out how much you should pay each creditor.

FREE DEBT MANAGEMENT PROGRAMME

If after working through your budget sheets you have money left over to offer for your secondary creditors, you may be able to get assistance from National Debtline, a free, independent advice service who will look to set you up with a free debt management programme (DMP). This is subject to fulfilling certain criteria. They may be able to set you up a free DMP if:

- You have at least three secondary creditors and
- Your money available to secondary creditors is £100 per month or more and
- You owe at least £5,000 in total.

If you feel that you may qualify for this, you will need to speak to us first to make sure that you have dealt with your business budget correctly as National Debtline will expect you to have sought our advice as a self-employed person before contacting them. **Phone us for advice.**

DEALING WITH SECONDARY CREDITORS

EXAMPLE OF OFFERS TO SECONDARY CREDITORS

The retailer in our example owes £300 business rates arrears and £400 rent arrears for the shop. An arrangement is made with the landlord to pay the current rent, plus £40 per month off the arrears. The council agree to repayment of the business rates arrears at £40 per month, which will clear the arrears before the next bill is due.

Money for secondary creditors is now £48 a month because £80 a month is being paid to priority creditors.

Below is how the £48 is divided fairly between creditors.

Each individual debt is divided by the total amount owed (£2,400), then multiplied by £48 – double check the payments you calculate which should add up to the total amount available for secondary creditors i.e. in this example £48.



REMEMBER

Your list of debts may be longer and different. This is just an example to help you make the pro-rata calculation – use a calculator!

Our retailer owes:

Flexible Bank Card	600.00
Wholesale Company	400.00
Easichack Financial Services	200.00
Finance Company	1,200.00
Total	£2,400.00

Flexible Bank Card £600 ÷ 2400 = 0.25 0.25 x £48 = £12	Easichack Financial Services £200 ÷ 2400 = 0.083 0.083 x £48 = £4
Wholesale Company £400 ÷ 2400 = 0.167 0.167 x £48 = £8	Finance Company £1200 ÷ 2400 = 0.50 0.50 x £48 = £24
Total to secondary creditors £48	

Available money for creditors (E) £

REPAYMENT SCHEDULE

STAGE 7 – PRIORITY CREDITORS (See Pages 15 to 27)

Available Monthly (per monthly budget)

	Balance Outstanding £	Monthly Repayments Offer £
Secured Business Loan/Rent Arrears	400	40
Domestic Mortgage Arrears		
VAT		
Tax & PAYE		
Business Rates Arrears	300	40
Council Tax Arrears		
Utilities Arrears		
Total Priority Debts (F)	700	80

Available for secondary creditors (E)-(F)

£

STAGE 8 – SECONDARY CREDITORS (See Pages 28 to 35)

Available for Secondary Creditors

Flexible Bank Card	600	12
Wholesale Company	400	8
Easichack Financial Services	200	4
Finance Company	1,200	24
Total	2,400	48

EXAMPLE LETTER TO SECONDARY CREDITORS

You can write out the following example letter and send it to your creditors. We have used square brackets [] to suggest different points you may want to make. Choose the ones that fit your circumstances and make any other changes you need to explain your situation to your creditors.



Remember: always keep copies of your business and household budget and any letters you send or receive, together with a notebook or diary of telephone conversations you have – make a note of the name of the person you speak to for future reference.

Secondary creditor's name and address

.....
.....

Your name and address

.....
.....

Dear Sir/Madam,

Business Name and address

.....
.....

Account No.

Like many small businesses I am/we are experiencing trading difficulties but feel that with the co-operation of creditors the business may be able to continue trading. I enclose details of the total debts outstanding. Also enclosed is my/our business and household budget sheet, which shows income from all sources and total household outgoings.

As you can see, I/we have [only £...per month] [only £... per week] [no money] left for outstanding debts.

[The offers made to creditors have been worked out on a pro-rata basis] and I/we have written to all creditors asking them to accept [reduced payments] [token payments] [a moratorium for three months].

EITHER

[In view of my present financial circumstances would you please accept payment of £...per month [£... per week]. It would be appreciated if you would confirm that interest will be frozen so that payments will reduce the actual debt.]

I would be grateful if you could send me a [paying in book] [standing order form] to make it easier to pay.

OR

[In view of my present circumstances it would be appreciated if you would agree to a three month moratorium to enable me to find employment.]

I am/we are making every effort to increase my/our income and will keep you informed as soon as my/our financial circumstances improve.

I/we ask that you give serious and sympathetic consideration to this proposal and look forward to hearing from you.

Yours faithfully

Signed

← A moratorium is an agreement to take no action for a short time (despite no offer of payment being made) on the basis that in time your position may improve enough for you to offer some level of payment.

Phone us if you would like more advice on writing to your creditors

DEALING WITH SECONDARY CREDITORS

MAKING PAYMENTS AND WAYS TO PAY

When you have made arrangements with your creditors, you will need a convenient way to pay. There are several things you could do:

- Open a building society account that offers free standing orders
- Ask your creditors for a paying-in book
- Check whether you have a PayPoint outlet at a local shop and if your creditors are part of this scheme
- If collectors call weekly at your home and you are offering a small amount, ask them to call every month instead
- You may be able to pay at a creditor's local office or retail outlet such as a shop
- If you send cheques or postal orders make sure you send your reference/account number and a covering note
- Keep a record of all the payments you make in case you need to dispute the amount the creditor says you owe.

REMEMBER

Start paying as soon as you can. If there is a delay in arranging a payment method, tell the creditor why and see if they can help. In the meantime, put the money to one side so that you can bring payments up-to-date if there is a delay in making the first payments.

Your creditors will often write to you after you've made an agreement, perhaps every three months, to see if you can now afford to pay more. If you still can't afford higher payments, write back and tell them, with a copy of your budget. Still pay what you can afford even if they want more.

WHAT IF A CREDITOR REFUSES MY OFFER?

Sometimes one or more of your creditors will refuse to accept the offer of payment you have made on your business and household budget and demand more than you can afford. However, don't give up; you can usually persuade creditors to accept your offer of payment by using the following steps:

- Start paying the amount you have offered anyway
- If some of your creditors have accepted your offer of payment, write to the creditors who have refused and tell them this.

For a factsheet on
**WHAT IF A CREDITOR
REFUSES MY OFFER?**
please phone us on 0800 197 6026



If a collector calls for your payment you should not let them persuade you to pay more than the amount you have offered no matter how persuasive they may be. Otherwise, you will not be able to make the payments on your **priority debts**.

Also, it isn't fair to other secondary creditors who have accepted your offer and may jeopardise other arrangements you have made. Most financial institutions are members of a trade association and have agreed to a code of practice. This says they should be sympathetic in cases of genuine difficulty.

Phone us if you feel a lender is acting unreasonably and we may be able to put you in touch with their trade association.

It may be more difficult to come to an arrangement with trade creditors, but keep trying because it is in their interests for you to make some payment, rather than nothing at all.

Also, if you continue to trade with them on a cash basis whilst reducing your debt, you remain a customer and most firms don't want to lose business as long as the debt is not getting any worse.

REMEMBER

The offers of payment in your business and household budget are fair to all your creditors and the most you can afford. If you allow one creditor to pressure you to pay more than is shown, you will not have enough for your outgoings and other creditors.

WHAT CAN I DO IF CREDITORS HARASS ME?

If you do not pay, your creditors are allowed to keep reminding you from time to time, but they must not do anything illegal. If they threaten or harass you to try and make you pay, they may be committing a criminal offence.

The Office of Fair Trading (OFT) has issued new Debt Collection Guidance from July 2003. It sets out the kind of behaviour which the OFT will regard as "unfair business practices". Breaches may call into question the lender's fitness to hold a consumer credit licence.

The general principles in the guidance are that creditors should not:

- communicate with you in an unclear, inaccurate or misleading manner (e.g. use documents made to look like official court documents)
- contact you in a deceitful manner (e.g. by misrepresenting the legal position such as pretending to be a bailiff and having the power to remove goods)
- put psychological pressure on you to the point of being oppressive (e.g. threatening to tell your neighbours about your debts or repeatedly calling you at home and at work)

- use unfair methods (e.g. refusing to negotiate or bypassing your representative and contacting you direct)
- levy charges unfairly (e.g. apply unreasonable charges which bear no relation to recovery costs).

If you think you are being treated unfairly, **phone us for advice** about making a complaint to the Office of Fair Trading.

You can't be prosecuted in the criminal court because you haven't paid your debts but some creditors might try to make you think you can – that's illegal as well.

If you are being harassed in any of these ways tell your local trading standards department or consumer protection department. If you have any queries about whether a creditor is acting legally, contact them. Their phone number and address are in the phone book, under the name of your local council.

For a factsheet on
HARASSMENT
please phone us on 0800 197 6026



WHAT IF MY CREDITORS TAKE COURT ACTION?

Many people are frightened of courts especially when they feel guilty because they owe money. But the county court is not there to judge anyone guilty or innocent, but to settle disputes about money owed, and how to repay it. The court is not there to serve the interests of creditors alone.

If court action is taken you will not usually have to go to a court hearing. Most of the procedure is done through the post.

- You will receive a "claim form" from the court. The claim form will include details of the debt, known as the "particulars of claim".
- If you don't agree with the amount of the debt the creditor says you owe, fill in the "defence form". In this case send the form back to the court.



EXTRA HELP

Putting in a defence or counterclaim is complicated.
Phone us for advice.

If you agree you owe the debt

The only way to avoid having a County Court Judgment (CCJ) registered on your credit file is to pay the amount in full plus the costs stated on the claim form. If you are unable to do this there will be a reply form with the claim form, for you to make your offer of repayment. This is called the "admission form". There are instructions included on how to fill in the form. It looks quite like a personal budget sheet and asks for similar information on income and essential outgoings.



WARNING

Do make an offer of payment

In the claim form there is a section you can fill in to include the payments you make on your priority debts. You also have space to include any other court judgments you have, and to list all your credit debts. It is important to make an offer of payment on the form in the "offer box". If you leave it blank the court will decide you have not made an offer and tell you to pay the whole debt at once or order you to pay what the creditor asks for.

- Fill in the form and send it back to the creditor (called the "claimant") not the court. The address will be in the "address for service" box and may be the creditor's agent or solicitor. There is a time limit of 16 days from the date on the postmark to send back the form. If you don't send it back, the court can order you to pay the whole debt in one lump sum.
- If the creditor accepts your offer you will receive an order from the court to pay your offer in monthly instalments. You should send your payments to the creditor, not the court. Keep a record of what you have paid and when. A CCJ will still be entered against you.
- If the creditor does not accept your offer the court will decide (or "determine") what you should pay each month.
- If you owe under £50,000, the court staff will decide without any hearing. If you owe over £50,000 the district judge decides either by looking at the papers or at a hearing in your local county court. When there is a hearing it is very important that you attend, taking your budget sheet with you.
- If you cannot afford what the court has decided you should pay, you can ask the court to look at your offer again. This is called a "re-determination". There is no fee for doing this. You must do this within 14 days of getting the order. The case should be transferred to your local county court for a hearing.
- The re-determination will be done by the district judge. Where the order was made by the court staff, the district judge can decide to have a hearing or make a decision by looking at the papers. You can ask for a hearing when you write to the court to ask them to look at your case again.
- If the district judge made the first order without a hearing then the re-determination of your offer must be at a hearing.
- If there is a hearing, the case will be automatically transferred to your local county court so you can attend. The court will give you a hearing date. You must go to the hearing, which should be in the district judge's rooms (in private). Take a copy of your personal budget with you.

DEALING WITH SECONDARY CREDITORS

i INFORMATION

Applying to get your payments reduced

If a district judge made the first order on how much you should pay at a hearing you cannot apply for a re-determination but must apply for the monthly payment to be reduced or “varied”. See “reducing payments on court orders” below.

For a factsheet on
**REPLYING TO A
COUNTY COURT CLAIM**

please phone us on 0800 197 6026



Reducing payments on court orders

Monthly payments you have been ordered to make can be reduced if your circumstances change or if you can't afford them. You can apply for a reduction using form N245, which you can get from the local county court office. There will usually be a fee to pay with your application.

If creditors have already taken you to court you can apply to the court for a reduced payment based on your pro-rata offers, using form N245.

For a factsheet on
**SUSPENDING A BAILIFF'S
WARRANT AND REDUCING THE
INSTALMENTS ON A COUNTY
COURT JUDGMENT**

please phone us on 0800 197 6026



If I am taken to court, what are the advantages?

- The court will stop interest being charged on most ordinary credit agreements. This means that the amount you owe cannot increase. If you owe over £5,000 on a personal debt or for supplies for your business, your creditor may still be able to charge interest. Some creditors may well tell you they can charge interest on a debt before and after judgment. If this happens to you **phone us for advice**.
- In most cases the court is likely to let you pay a monthly amount which you can afford. But it can only do this if you explain your income, outgoings and other debts on the reply form to the county court claim.
- Usually you won't have to go to the court for a hearing. Most of the procedure is done through the post.

What are the disadvantages?

- Court costs are added on to your debt, although creditors cannot add on what they wish. The costs are added on a sliding scale depending upon the amount of money owed.
- Details of judgments are recorded on the register of county court judgments and passed to credit reference agencies. This may make it difficult for you to get credit in the future.

- If you pay off your county court judgment within one month you can ask to have the entry removed, but there is a fee for doing this.
- If you do not pay the monthly amount which the court orders, the creditor may take further action against you. So make sure you pay your monthly payments regularly or apply for them to be reduced if you cannot afford the first amount which the court fixed. See “reducing payments on court orders” opposite.

Administration orders

When you have been taken to the county court you might be able to apply for an administration order. This is a way of putting all your debts together and making one monthly payment into the court. The court then shares it amongst your creditors. For some types of debt, only arrears can be included. The total of the debts must be no more than £5,000. Your creditors can't take any further action against you if you have an administration order.

The application form (form N92) is available from your local county court office. You may need help in filling in the application form as local courts vary in the way they deal with administration orders. It is often more difficult for the self-employed to obtain an administration order but if you can show the court that you are trading on a cash basis and not incurring further credit, the court may be prepared to grant an order.

If you want to apply for an administration order, **phone us for advice**.

For a factsheet on
ADMINISTRATION ORDERS
please phone us on 0800 197 6026



FURTHER ACTION THE CREDITOR CAN TAKE

If you do not pay the monthly amount the court orders the creditor can ask the court to take further action. The following methods are most commonly used.

Bailiff's warrant

The creditor can ask the court to send a notice from the county court bailiffs called a “warrant of execution”. **You do not have to let the bailiffs in. The bailiffs cannot force their way into your home unless you have let them in before. They could take your vehicle.** You can ask the court to suspend a warrant by filling in a county court form N245 and making an offer of payment you can afford. You will need to pay a fee to do this.

For a factsheet on
**SUSPENDING A BAILIFF'S
WARRANT IN THE COUNTY COURT**
please phone us on 0800 197 6026





INFORMATION

If you want to ask the court to suspend a warrant you will need to pay a fee, unless you are on income support, income based jobseeker's allowance or if you receive the guarantee credit element of pension credit. You don't have to pay the fee if you get working tax credit with child tax credit or if it includes a disability element and your income is below a set amount. There is an application form called an EX160 to fill in to ask for the fee to be waived by the court if it will cause you hardship or because you are on benefits.

Keeping your belongings

- As long as you act quickly, it is rare for county court bailiffs to actually take people's belongings away.
- Basic household goods cannot be taken.
- County court bailiffs have no right to break in, unless you let them in before.
- Use an N245, to suspend the warrant immediately.

Attachment of earnings

If you have ceased trading and become an employee, the court can order your employer to make deductions from your wages to clear your debt if you default on a county court judgment. The rate is worked out by the court using a set formula. This order can be suspended if it might affect your employment and you can make the payments yourself. If a creditor is threatening to make an attachment of earnings against you **phone us for advice**.

For a factsheet on
**ATTACHMENT OF EARNINGS
IN THE COUNTY COURT**
please phone us on 0800 197 6026



Charging orders

If the court orders you to pay your judgment in one lump sum (or "forthwith") or if you fall behind on the monthly amount ordered by the court, the creditor can ask for a charge on your home. This is called a "charging order". This means the debt is secured on your home like a mortgage and may put your house at risk. There must be a hearing in the court before a charging order is made final. It is up to the court to decide and there are several arguments you can use against a charging order being made. Charging orders are very popular with creditors as it gives them security for their debt. Because of this they often ask the court to make a forthwith judgment.

If a creditor applies for a charging order, phone us for advice before the hearing.

For a factsheet on
CHARGING ORDERS
please phone us on 0800 197 6026



REMEMBER

- If you do have to attend a court hearing, your name will not appear in the local paper, so don't worry about publicity.
- The county court is not a criminal court and is not there to punish anyone.
- The court staff and the district judge who decide the cases are used to dealing with people who do not have a solicitor.
- If you receive a letter or form from the court you do not understand, take it to them and ask for an explanation, or **phone us for advice**.

Do remember that you have rights as well as your creditors.

CAN I GET CREDIT AGAIN?

There is no such thing as an actual "credit blacklist" but if you do not pay your debts, you may find it difficult to get credit in the future.

When you apply for credit, most companies will consult a credit reference agency. They keep records of all county court judgments and details about credit accounts. This will show if you are behind with your payments. If you are in arrears or have a county court judgment you may well be refused credit. The records will also show when you have paid your debts.

If you are refused credit, you have a right to ask if the finance company has used a credit reference agency. They must give you the agency's name and address.

To find out what information an agency holds on you, write to them and enclose a cheque or postal order for £2. The agency should send the information within seven days. If the information is wrong, you have a right to change it.

The office of the Information Commissioner publishes a useful guide dealing with credit reference agencies, called "Credit Explained". The address is listed on page 49.

For a factsheet on
CREDIT REFERENCE AGENCIES
please phone us on 0800 197 6026



CREDIT REPAIR COMPANIES

You may have heard of companies that offer to clear your credit record on payment of a fee. Be very careful. Many credit repair companies promise to remove judgments when they cannot legally be removed. Before sending any money to a credit repair company, contact your local trading standards department or look at this website which gives more information on credit repair (www.ukcreditrepair.co.uk) or **contact us for advice**.

This section explains what you should do if you need to cease trading. It also explains what happens if a creditor wishes to make you bankrupt or if you wish to make yourself bankrupt, as well as alternatives such as individual voluntary arrangements (IVAs).

SHOULD I CONTINUE TRADING?

It may be clear from your business and household budget that you are trading at a loss, but this may be because of short-term cash difficulties.

Phone us for advice if you do not know whether you should continue trading.

REMEMBER

If you delay too long before ceasing to trade in an unprofitable business, it may be more difficult to solve your problems.

There are a few things that you should do, if you decide to cease trading:

1. **Tell HMRC (Tax Office)** that you have ceased to trade. They will require a completed tax return for the tax year in which you ceased trading, but this cannot normally be completed until the following 5th April. You should also review the “payments on account” you are due to pay as you may need to ask them to be amended to reflect your cessation of trading. If you have been trading at a loss, this will be taken into account when your tax for the whole year is calculated.

REMEMBER

If you already have an arrangement for payment of your tax liability and your ability to maintain payment is affected by ceasing to trade, let HMRC know – don't simply stop making payments. Re-negotiate the arrangement based on your changed financial situation.

If you cannot afford to pay your accountant and so cannot provide final accounts, phone us for advice, or phone Tax Aid (see page 49).

2. **Tell HMRC (VAT office)** that you have ceased to trade. They will send a booklet containing a form for you to apply for de-registration and to send a final return. If you do not complete these forms, they will continue to send assessments, followed by enforcement of arrears. **Remember**, it is usually easier to make an arrangement for repayment of any VAT arrears after you have ceased trading.
3. **Check your business lease.** If it still has some years to run, it may be possible to assign (transfer) it to someone else. Your landlord's permission will be required for an

assignment, and whilst it should not be unreasonably refused, you will usually have to pay the legal costs. **Take care though – if the person to whom you assign the lease subsequently doesn't pay their rent, you may become liable again under the original lease agreement.** If you cannot assign the lease, you will continue to be responsible for the rent for the remainder of the lease even if you have ceased trading. Tell your landlord you are ceasing to trade and see if they will accept surrender of the lease, if you cannot find anyone to take it over.

4. **Tell the council** that you are no longer trading from the premises. If you have a shop, there will be no business rates to pay for the empty property for three months, but you will have to pay 50% after that if nobody takes over the lease to the premises. There are no business rates to pay on empty factory or warehouse premises.
5. **Remember** to obtain final readings of gas and electricity meters and obtain final accounts for water and the telephone at your business premises. Arrears may be added to domestic accounts, **phone us for advice if this happens.**
6. **Tell the contributions agency** you have ceased trading, as you will not be liable for Class 2 National Insurance Contributions (NICs).
7. **Check your priority debts.** Arrears of rent for the business premises and business fuel supplies may no longer be a priority, but tax, VAT, and business rates must still be treated as priorities if you are to avoid distraint and/or bankruptcy. **If your business trades as a limited company, inform Companies House in writing (see page 48).**
8. **Paying creditors once you have ceased trading.** Once you have ceased to trade you may find that your creditors will give you more time to pay. You could also consider making them lump sum payments as a “full and final” settlement of the debt. However, such a settlement may not be legally binding unless by way of an individual voluntary arrangement (see page 39) an administration order (see page 34) or supported by a deed of compromise (a written agreement between you and your creditor, witnessed by a solicitor). The success of this type of strategy largely depends on your ability to negotiate directly with the creditors and convince them that such an approach gives them the greatest return, compared with say, bankruptcy. It

is important that all creditors are treated fairly no matter how much pressure they put on you.

REMEMBER

If you cease trading, you should find out what benefits you are entitled to claim. If you are entitled to either income support or income based jobseeker's allowance, you may be able to get assistance with your mortgage interest payments after a certain waiting period.

If you took out your mortgage before 2nd October 1995, the Department for Work and Pensions (DWP) will not pay anything towards your mortgage costs for the first 8 weeks. They can pay up to half of your mortgage interest for the next 18 weeks and all of it thereafter if you are still unemployed.

For mortgages taken out after 2nd October 1995 you will receive no help for the first 39 weeks, after which they will pay your mortgage interest in full. The DWP will only pay interest payments for the actual purchase of your home, up to a maximum of the first £100,000 of your mortgage and at a rate determined by the government based on the Bank of England base rate. This maximum may be exceeded if any extra was used to adapt your home for someone with a disability. No interest will be paid on additional finance for other purposes, such as business loans.

BANKRUPTCY

Statutory demand

Creditors can issue bankruptcy petitions for debts of £750 or more, but this is only likely to be threatened by HM Revenue and Customs on a regular basis. However, Business Debtline has seen landlords and trade creditors start bankruptcy proceedings on occasions.

Before a creditor can lodge a bankruptcy petition, the creditor must serve a statutory demand on you or have unsuccessfully attempted to recover a court judgment.

- If you dispute the debt, you can apply to the court to have the statutory demand set aside.
- If you wish to avoid bankruptcy by setting up an individual voluntary arrangement (see page 39) you should apply to the court for an interim order via an insolvency practitioner.

If you receive a statutory demand, phone us for advice. You must act within 18 days if you want to make an application to the court.

You may be able to negotiate payments with the creditor to avoid bankruptcy. Creditors or collection agencies will sometimes issue a statutory demand to get you to pay up if they feel that you are holding back payment for whatever reason or you have assets they can get hold of to repay the

debt. They sometimes issue them with no intention to make you bankrupt as it is a cheap way to scare you in to paying.

If you have no assets and are on a low income, tell them now. They may consider it not worth going to the expense of making you bankrupt if they have nothing to gain. Send them your business and household budget sheet and list of priority and secondary creditors so that they can see the full extent of your debts. They may decide to accept a monthly payment after all rather than forcing you out of business if they have nothing to gain.

However, always treat a statutory demand seriously and don't leave the matter until it is too late to deal with.

If the matter proceeds to court, this may be the High Court in London – it is often difficult to get the hearing transferred to a local court but you must attend in person. HM Revenue and Customs generally issue proceedings in London.

Even so, the judge at the court hearing has to make a bankruptcy order unless:

1. You have paid the debt off and have proof
2. You have given the creditor security to cover the debt
3. You can prove the debt is not due
4. The creditor has unreasonably refused an offer to secure or compound the debt.

Unlike with county court judgments, the court will not allow you to pay the debt off by monthly instalments to avoid bankruptcy. However, the judge may adjourn the hearing to allow you a short time to raise capital to pay off the debt in full or look at the possibility of an individual voluntary arrangement (see page 39).

The bankruptcy petition

You may lodge your own bankruptcy petition, the total cost for which is presently £460. This consists of £150 court fees and £310 deposit. You may apply to the court to waive the £150 court fees in cases of hardship or if you are claiming certain benefits. Bankruptcy is dealt with in the same way whether you present your own petition or are made bankrupt by a creditor.

Assets

Once you are bankrupt, the Official Receiver or appointed trustee may wish to sell any assets that you have. Certain goods are not treated as assets such as:

- Clothing, bedding, furniture and household equipment and provisions as are necessary for satisfying the basic domestic needs of the bankrupt and their family
- Such tools, books, vehicles and other items of equipment necessary for the bankrupt to carry on with employment.

IMPORTANT

If an asset such as a car is essential for work you may be able to keep it. However, if it is of considerable value it may be sold requiring you to replace it with a cheaper one.

If you own property then this may be sold depending on whether it has any equity (value) in it. Once you have gone bankrupt the interest in your home is transferred to the Official Receiver or trustee. If you are the sole owner then the whole of the value of the property is transferred. With jointly owned property, the Official Receiver is usually only entitled to the bankrupt's share of the equity, known as your **beneficial interest**.

IMPORTANT

You may be considered to have a beneficial interest in your property even if you are not named on the mortgage, i.e. it is in your partner's name. **Phone us for advice.**

It may be possible for the joint owner, a member of the family or friend to buy out your beneficial interest in the property. This could be particularly advantageous where there is little or no equity as this could be for a nominal amount.

New rules from April 2004

The Enterprise Act 2002 became effective in April 2004. If you went bankrupt before this date it used to be the case that the Official Receiver could sell your property at any time in the future. From 1st April 2004, the Official Receiver has three years in which to deal with the interest in your property. If you were made bankrupt prior to this date, the three years started on 1st April 2004. If you were made bankrupt after this date, the three years start from the date of the order being made. If after this date no action has been taken, your home will belong to you.

The Official Receiver will have these options:

- Come to an arrangement with you about the property
- Sell your home
- Apply for an Order for Sale
- Apply for a charge on your home.

This means that you should not be left with the Official Receiver coming back years after your bankruptcy has ended, wanting to sell your home **unless a charge is placed on your property**. If a charge has been placed, the Official Receiver has 12 years to apply for an Order for Sale.

Other effects of bankruptcy

- It is an offence to obtain credit in excess of £500 without informing the lender that you are an undischarged bankrupt.
- You are unlikely to be able to hold a business bank account, but may be able to obtain a basic personal account. A list of these is available on the Financial Services Authority's website www.fsa.gov.uk
- You will have to make arrangements with fuel companies and your phone company for the future supply of services. In effect this means you will have to pay a deposit for future supplies, have a meter installed, or transfer the bills to someone else in your household who is prepared to take responsibility for them.
- The court may make an order for you to make payments out of your income in the form of an income payments order (IPO), if it considers you have the means to do so. Your essential expenditure will be taken in to consideration when calculating if you are able to contribute anything towards the bankruptcy. Alternatively, the Official Receiver or trustee can ask you to enter in to a written agreement called an income payments arrangement (IPA) which works on a similar basis. In both cases, if you are able to do so, this would generally be for a period of three years. If your circumstances change during this period, you can inform the Official Receiver.
- You cannot be a director of a limited company and will not be able to practice certain professions e.g. solicitors and accountants.
- If the Official Receiver considers that your conduct has been dishonest or you are to blame in some other way, he/she can ask the court for a Bankruptcy Restriction Order, (BRO). In this case, certain restrictions that apply to bankruptcy may be extended for up to 15 years. For further information on BROs, **phone us for advice.**

However:

- If it is the first time you have been bankrupt you will obtain an automatic discharge after 12 months or on 1st April 2005 if you were made bankrupt before 1st April 2004. This is as long as you cooperate with the Official Receiver whilst bankrupt.
- With the trustee in bankruptcy's agreement, you can continue to trade, if it is possible for you to do so without using credit. You may be able to keep the tools of your trade and an essential vehicle.

- You can continue to pay your mortgage, but will also need to pay any other debts which are secured on your home.
- If another person can raise sufficient money to pay the Official Receiver or your trustee your share of the equity in your house, you need not lose your home.

If you are considering bankruptcy **please phone us for advice.**

For a factsheet on
BANKRUPTCY
 please phone us on 0800 197 6026



INDIVIDUAL VOLUNTARY ARRANGEMENTS

It may be possible to avoid bankruptcy if you can raise a sum of money that your creditors will agree to accept in full and final satisfaction of their debts. You will need to contact an insolvency practitioner to supervise the arrangement.

The money you can raise will have to be enough to pay their fees, as well as pay the creditors. However, if you can show that the creditors will get at least as much as they would if you were bankrupt, an individual voluntary arrangement (IVA) stands a good chance of success.

The insolvency practitioner will prepare a proposal to the creditors. This can be very flexible and may be for payments out of income for up to five years, as well as/instead of a lump sum payment. The proposal will usually contain a clause that if you do not keep to the arrangement, the supervisor (who is the insolvency practitioner) has a duty to apply for bankruptcy and has the right to reserve part of any money paid for this purpose. The IVA has the authority of the courts and creditors cannot pursue when this is in place.

Remember that you should not enter into an IVA if there is a possibility you may not be able to keep to the agreement. This will almost invariably mean that bankruptcy proceedings will be commenced by the supervisor.

If you need more information about individual voluntary arrangements, **please phone us.**

For a factsheet on
**INDIVIDUAL
 VOLUNTARY ARRANGEMENTS**
 please phone us on 0800 197 6026



Business Debtline has noticed that there is a lot of confusion with regards to what it means to be either a sole trader, partnership or limited company.

We have therefore prepared these very brief notes but if you require further advice, phone us.

SOLE TRADER

This is where it is just you in business on your own. Your business bills, business bank account statements, invoices, letterheads and other business correspondence have just your name on it. You are personally liable for all business debts, which are legally treated no different to your personal debts. Just because you trade as a business name, doesn't mean to say that you can separate yourself from the business debts.

For a factsheet on
SOLE TRADERSHIPS
please phone us on 0800 197 6026



PARTNERSHIPS

Partners are jointly and severally liable for all business debts. This means that all partners can be pursued for the total debt; it is not possible to divide it into partners' shares. If creditors cannot obtain payment of a debt from one partner, they will seek payment in full from the others. However, for Income Tax purposes, partners are taxable only on their share of the business profits.

There is no legal requirement for a written partnership agreement, though you may consider it desirable to have one. Otherwise, all that is required is that your name appears on the business notepaper as a partner. So if you do dissolve the partnership, make sure that all of the existing creditors know that you will not be responsible for debts incurred after the partnership is dissolved and that your name no longer appears on business notepaper. Keep copies of the letters.

If you have given a personal guarantee or a legal charge to a bank as security for the business debts, make sure that the bank accepts you are only responsible for any debt incurred before the partnership is dissolved.

If one partner goes bankrupt, although the debt will be written off for that partner, creditors can still pursue the remaining partners (or former partners) for the whole debt. In effect, what this means is that partners with most assets have the most to lose.

If one partner has had to pay a partnership debt they have the right to sue other partners for their share of the debts.

For a factsheet on
PARTNERSHIPS
please phone us on 0800 197 6026



LIMITED COMPANIES

A limited company is a separate legal entity from its directors and shareholders.

A company is deemed to be insolvent when it is unable to pay its debts either as they fall due or where the value of its assets is less than the amounts of its liabilities including contingent and prospective liabilities. Assets will include your stock, fixtures and fittings and could include money that you are owed or work you have in hand. In addition, contingent and prospective liabilities include money you will owe in the future.

Directors owe a duty of care to the company, its shareholders, employees and, where there is doubt as to its insolvency, also to creditors.

Generally a director (or someone acting as a director) is not personally liable for the company's debts. However you can be personally liable for the following:

- Your own personal PAYE and NI deductions which are unpaid
- Any unpaid income tax arising where you have taken cash drawings from the company
- Any personal guarantees given on behalf of the company, most commonly to banks, finance companies, landlords and occasionally major trade creditors
- Any liability arising as a result of trading whilst insolvent prior to the company ceasing trading and/or being put into liquidation. This is known as "**wrongful trading**"
- Any liability where you have benefited from a transaction at an undervalue and/or preference
- Any liability resulting from fraudulent trading.

You will therefore need to be very careful when you are trading if there is any doubt as to the solvency of the company. If you are in any doubt about this, **phone us for advice.**

Options for companies

There are a number of different options and processes relating to dealing with companies which are insolvent or which may have serious financial difficulties. The main ones are:

Turnaround and informal arrangements

Corrective action such as company and capital restructuring, reducing costs, concentrating on core products, sale of part of the business, and increasing financial control can help towards making a company profitable. Informal arrangements can then be made with creditors to pay the debts off. The business budget in this pack can help you with this approach.

The following are formal procedures that require the supervision of an authorised insolvency practitioner (or Official Receiver in some cases):

Company voluntary arrangements

Similar to an IVA for sole traders (see page 39), this is a formal arrangement between the company and its creditors to settle its debts.

Administration

An insolvency practitioner is appointed to control the company with the aim of making proposals to lead to a turnaround/company survival or to coming to arrangements with creditors which give a better realisation of the company's assets (e.g. sale of business).

Administrative receivership

In this case an insolvency practitioner realises the company's assets to repay a major creditor who has a security over the company's assets (e.g. banks).

Liquidation

Liquidation is the process whereby the assets of the company are realised and distributed among its creditors according to their legal priority and entitlement. For insolvent companies there are two main types:

- In a **creditors' voluntary liquidation** the directors pass a resolution to wind the company up. A creditors' meeting is held to nominate the appointment of a liquidator and consider a statement of affairs
- In a **compulsory liquidation**, creditors petition to the court for the company to be wound up.

Within six months of a company being put into liquidation, the insolvency practitioner has a duty to report to the Department of Trade and Industry (DTI) on the conduct of any director of an insolvent company who has been a director within three years from the date of insolvency. This could lead to prosecution and disqualification if the insolvency practitioner finds that there has been wrongdoing or fraudulent trading on the part of the directors.

Striking off/dissolution

A private limited company (Ltd) may apply to be struck off the companies register if in the previous three months it has not traded or otherwise carried on business.

Application may be made using form 652a supplied by Companies House (see page 48).

This is only a brief summary. Phone us if you require more details.

For a factsheet on
LIMITED COMPANIES
please phone us on 0800 197 6026



ACCOUNTANTS, SOLICITORS AND OTHER ADVISERS

If you have an accountant, solicitor or other professional adviser, then we recommend that you speak to them before you make any major decision about the future of your business.

Obviously they are commercial businesses, but if you have had an ongoing relationship with them, they may still give you some professional advice without charge (or a small charge). Ask them. You could also call "Lawyers for Your Business," a scheme run by the Law Society, who will do the same (see page 49).

You may be eligible for legal help and help at court (this used to be known as legal aid). Ask the solicitor.

What if my accountant refuses to return my books?

If you have not paid your accountant, then he or she may refuse to give your books back to you until the bill is paid. This is known as a lien.

Essentially, the accountant has the right to keep the books upon which work has been carried out, and for which some or all of his fees have not been paid. He/she should not be keeping books for which there is no debt due on the work done. A lien is not enforceable in bankruptcy or in liquidation situations.

You should contact your accountant and explain that you are unable to pay, and that the return of your books will help you put together some repayment proposals, which should result in a better offer to the accountant than would otherwise be. This is particularly where there are income tax or VAT assessments to be dealt with, which could result in refunds.

You could take legal action to recover your books, but it is important that you get a professional opinion from a solicitor.

Fee disputes

If you are in a fee dispute with your professional adviser, then you should ask for a detailed breakdown of the amount. You should pay the amount you feel you owe (if any) and put in writing the reasons that you disagree with the remainder.

Where you cannot come to a settlement, then you may wish to contact the appropriate professional body (e.g. The Institute of Chartered Accountants or The Law Society), who have procedures for resolving such disputes.

At the centre of this pack is a pull-out draft business and household budget sheet. Use this as you work through the pack to help you assess the viability of your business and allow you to prioritise your debts and calculate offers to your creditors.

There is then a working copy on pages 43 and 44 for you to transfer the information from your draft on to. This can then be copied and sent to your creditors.

Pages 45, 46 and 47 are master copies for you to keep should you need to reassess your financial position at a future date. Remember you can obtain additional copies from us by phone.

You can also use it to help support applications for benefits or you can send it to creditors in support of offers being made.

Page 47 covers your assets and savings. You will not normally need to send this with your offers, but it can help in some negotiations, particularly when dealing with court proceedings. It will also help you complete your overall picture of the situation.

It is important that all applicable sections are completed, otherwise you will not be able to deal with the whole situation effectively.

If you are operating as a limited company, then you should keep the business budget separate from that for your household. You should still complete the household budget as it may allow you to reduce the salary level you are drawing from the company in order to keep it solvent and increase its ability to pay creditors. It is particularly important to complete and use both budgets where there are personal guarantees.

If you have problems working out your business and household budget, or any other questions, phone us for advice.

THIS IS YOUR WORKING COPY

MONTHLY BUSINESS BUDGET
- YOUR WORKING COPY

STAGE 1 - INCOME	£
Receipts for 3 months	_____
Average Receipts per Month (A)	_____
STAGE 2 - COSTS	£
Stock Purchases	_____
Rent	_____
Business Rates	_____
Loan Repayment	_____
Bank Interest	_____
Bank Charges	_____
Wages/PAYE/Nat Ins	_____
Water Rates	_____
Gas	_____
Electricity	_____
Insurance	_____
Transport/Motor Costs	_____
Stationery	_____
Postage	_____
Cleaning/Repairs	_____
Telephone	_____
VAT	_____
Accountant/Professional Fees	_____
Other	_____
TOTAL COSTS (B)	_____
STAGE 3 - DRAWINGS	£
Income Less Costs (A) - (B)	_____
LESS:	_____
Estimated Income Tax	_____
National Insurance Class 4	_____
National Insurance Class 2	_____
Total Available for Drawings	_____

MONTHLY HOUSEHOLD BUDGET
- YOUR WORKING COPY

STAGE 4 - HOUSEHOLD INCOME	£
Drawings from Business	_____
Salary (Partner)	_____
Income Support	_____
Jobseeker's Allowance	_____
Child Benefit	_____
Tax Credits	_____
Non Dependants	_____
Pension	_____
Other Benefits	_____
Other Income	_____
Total Income (C)	_____
STAGE 5 - OUTGOINGS	£
1st Mortgage/Rent	_____
2nd Mortgage	_____
Endowment/Life Insurance	_____
House Insurance	_____
Council Tax	_____
Water	_____
Gas	_____
Electricity	_____
Household Expenses	_____
Telephone	_____
Magistrates' Court Fines	_____
TV Licence & Rental	_____
Travel Expenses	_____
Hire Purchase	_____
Clothing	_____
Pension Contributions	_____
Maintenance	_____
Health Costs	_____
Other	_____
Total Outgoings (D)	_____
STAGE 6 MONEY FOR CREDITORS	£
Available for creditors (C) - (D)	_____

THIS IS YOUR MASTER COPY TO KEEP

**MONTHLY BUSINESS BUDGET
- YOUR MASTER COPY**

STAGE 1 - INCOME	£
Receipts for 3 months	_____
Average Receipts per Month (A)	_____
STAGE 2 - COSTS	£
Stock Purchases	_____
Rent	_____
Business Rates	_____
Loan Repayment	_____
Bank Interest	_____
Bank Charges	_____
Wages/PAYE/Nat Ins	_____
Water Rates	_____
Gas	_____
Electricity	_____
Insurance	_____
Transport/Motor Costs	_____
Stationery	_____
Postage	_____
Cleaning/Repairs	_____
Telephone	_____
VAT	_____
Accountant/Professional Fees	_____
Other	_____
TOTAL COSTS (B)	_____
STAGE 3 - DRAWINGS	£
Income Less Costs (A) - (B)	_____
LESS:	_____
Estimated Income Tax	_____
National Insurance Class 4	_____
National Insurance Class 2	_____
Total Available for Drawings	_____

**MONTHLY HOUSEHOLD BUDGET
- YOUR MASTER COPY**

STAGE 4 - HOUSEHOLD INCOME	£
Drawings from Business	_____
Salary (Partner)	_____
Income Support	_____
Jobseeker's Allowance	_____
Child Benefit	_____
Tax Credits	_____
Non Dependants	_____
Pension	_____
Other Benefits	_____
Other Income	_____
Total Income (C)	_____
STAGE 5 - OUTGOINGS	£
1st Mortgage/Rent	_____
2nd Mortgage	_____
Endowment/Life Insurance	_____
House Insurance	_____
Council Tax	_____
Water	_____
Gas	_____
Electricity	_____
Household Expenses	_____
Telephone	_____
Magistrates' Court Fines	_____
TV Licence & Rental	_____
Travel Expenses	_____
Hire Purchase	_____
Clothing	_____
Pension Contributions	_____
Maintenance	_____
Health Costs	_____
Other	_____
Total Outgoings (D)	_____
STAGE 6 MONEY FOR CREDITORS	£
Available for creditors (C) - (D)	_____

Remember this section is for you to use to gain a clear perspective of the situation your business is in. You do not necessarily have to show this to creditors unless it will assist you with negotiations or court proceedings.

ASSETS AND SAVINGS

BANK ACCOUNTS AND SAVINGS	Credit Amounts £	Overdrawn Amounts £
Business Current Account		
Personal Current Account		
Other Bank Accounts		
Building Society Accounts		
National Savings		
Premium Bonds		
Shares/PEPs/ISAs etc.		
Total		

OTHER ASSETS	Secured £	Estimate Value £	Mortgage/Loan Outstanding £	Net Equity £
Business Assets				
Business Property				
Business Vehicles				
Business Equipment				
Business Stock				
Business Debtors				
Personal Assets				
House/Main Residence				
Other Property				
Private Vehicles				
Other Assets				
Total				

PLACES FOR HELP AND ADVICE

Many of these are head office addresses which should be able to give you the address of a local office. You can also usually check their website for details.

adviceUK Tel: 0207 407 4070
12th Floor, London Bridge House
25 London Bridge Street
London, SE1 9ST
www.adviceuk.org.uk

Age Concern Tel: 0800 00 99 66
Freepost (SWB 303752) (for a range of factsheets)
Ashburton
Devon, TQ13 7ZZ
www.ace.org.uk

ChildLine Tel: 0800 1111
Freepost 1111
London, NI 0BR
www.childline.org.uk

Companies House Tel: 0870 333 3636
Crown Way
Maindy
Cardiff, CF14 3UZ
www.companieshouse.gov.uk

Consumer Direct Tel: 0845 404 0506
(for help with consumer problems)
www.consumerdirect.gov.uk

Council of Mortgage Lenders Tel: 0207 437 0075
3 Saville Row Factsheet line 0207 440 2255
London, W1F 2PB
www.cml.org.uk

Cruse Tel: 0870 167 1677
(Advice and support for bereaved families)
www.crusebereavementcare.org.uk
126 Sheen Road
Richmond, TW9 1UR

DIAL UK Tel: 01302 310 123
(Helpline offering advice for people with disabilities)
www.dialuk.org.uk
St Catherine's House Hopice,
Tickhill Road,
Doncaster, DN4 8QN

Disability Rights Commission Tel: 0845 7622 633
Freepost MID 02164
Stratford-upon-Avon, CV37 9BR
www.drc-gb.org

Drinkline Tel: 0800 917 8282

Department for Work and Pensions (DWP)

Carer's Allowance Unit Tel: 0125 385 6123

Child Support Agency Enquiry Line Tel: 0845 906 0708
www.csa.gov.uk

Disability Benefits Enquiry Line Tel: 0800 88 22 00
www.dwp.gov.uk

Disability Living Allowance & Attendance Allowance Helpline Tel: 0845 712 3456

New Deal Tel: 0845 606 2626
www.newdeal.gov.uk

New Deal for Lone Parents Tel: 0800 868 868
www.newdeal.gov.uk

Pension Credit Claim Line Tel: 0800 99 1234
www.thepensionservice.gov.uk

Tax Credits Helpline Tel: 0845 300 3900
www.hmrc.gov.uk

Veterans Agency Freeline Tel: 0800 169 2277
www.veteransagency.mod.uk

Winter Fuel Payments Helpline Tel: 0845 915 1515
www.thepensionservice.gov.uk/winterfuel

Energywatch Tel: 0845 906 0708
(For fuel complaints and to compare fuel prices)
www.energywatch.org.uk
4th Floor, Artillery House,
Artillery Road, London, SW1P

Federation of Small Businesses Tel: 01253 336000
Whittle Way
Blackpool Business Park
Blackpool, Lancashire, FY4 2FE
www.fsb.org.uk

Financial Services Authority (FSA) Tel: 0845 606 1234
(Advice on endowments/pensions etc)
www.fsa.gov.uk
Consumer Helpline,
25 The North Colonnade,
Canary Wharf, London, E14 5HS

Financial Services Compensation Scheme Tel: 0207 892 7300
www.fscs.org.uk
7th Floor, Lloyds Chambers,
1 Portsoken Street, London, E1 8BN

Financial Ombudsman Service Tel: 0845 080 1800
(For complaints about banks, building societies, insurance, investments, endowments and pensions)
www.financial-ombudsman.org.uk
South Quay Plaza,
183 Marsh Wall, London, E14 9SR

Gamblers Anonymous Tel: 08700 50 88 80
PO Box 88,
www.gamblersanonymous.org.uk
London, SW10 0EU

Gamcare Tel: 0845 600 0133
(Advice on gambling issues)
www.gamcare.org.uk
2/3 Baden Place, Crosby Row,
London, SE1 1YW

Help the Aged Tel: 0808 800 6565
207-221 Pentonville Road,
www.helptheaged.org.uk
London, NI 9UZ

Housing Corporation Tel: 0845 230 7000
(For a list of housing associations)
www.housingcorp.gov.uk
149 Tottenham Court Road,
London, W1T 7BN

IFA Promotions Office
(For a list of Independent
Financial Advisers)

Tel: 0800 0853 250
www.unbiased.co.uk

Information Commissioner
(For Data
Protection Issues)
Wycliffe House, Water Lane,
Wilmslow, Cheshire, SK9 5AF

Tel: 01625 545 700
www.informationcommissioner.gov.uk

Lawyers for Your Business
(Legal advice for businesses)
113 Chancery Lane,
London, WC2A 1PL

Tel: 0207 405 9075
www.lawsociety.org.uk

Law Society
113 Chancery Lane,
London, WC2A 1PL

Tel: 0207 387 8570
www.lawsociety.org.uk

**Local Government
Ombudsman**
21 Queen Anne's Gate,
London, SW1H 9BU

Tel: 0845 602 1983
www.lgo.org.uk

Office of Fair Trading (OFT)
Fleetbank House
2-6 Salisbury Square,
London, EC4Y 8JX

Tel: 0845 722 4499
www.of.gov.uk

**Office of Gas and
Electricity Markets (OFGEM)**
9 Millbank, London, SW1P 3GE

Tel: 0845 906 0708
www.ofgem.gov.uk

**Office of Communications
(OFCOM)**
Riverside House,
2A Southwark Bridge Road,
London, SE1 9HA

Tel: 0845 456 3000
www.ofcom.gov.uk

**Office of Telecommunications
Ombudsman Service (OTELO)**
Wilderspoon Park, Warrington,
Cheshire, WA4 6HL

Tel: 0845 050 1614
www.otelo.org.uk

**Office of Water Services
(OFWAT)**
(Check your yellow pages for your
regional WaterVoice office)

Tel: 0121 625 1300
www.ofwat.gov.uk

Parliamentary Ombudsman
(Investigates complaints about
government departments. Ask your MP)
Millbank Tower, Millbank,
London, SW1P 4QP

Tel: 0845 015 4033
www.ombudsman.org.uk

Relate

Tel: 0845 130 40 16
www.relate.org.uk

Samaritans

Tel: 0845 790 9090
www.samaritans.org.uk

Saneline
(Support for mental illness)

Tel: 0845 767 8000
www.sane.org.uk

Shelter
88 Old Street,
London, EC1V 9HU

Tel: 0808 800 4444
www.shelter.org.uk

Small Business Service
(National telephone helpline on
issues affecting small businesses)
Kingsgate House,
66/74 Victoria Street,
London, SW1E 6SW

Tel: 0845 001 0031
www.sbs.gov.uk

Taxaid
Linburn House,
342 Kilburn High Road,
London, NW6 2QJ

Tel: 0207 803 4959
www.taxaid.org.uk

Telephone Helplines Association
(Provides information on helplines)

Tel: 0845 120 3767

Trading Standards
(To complain to your local
trading standards on line)

www.consumercomplaints.org.uk

TV Licensing
Bristol BS98 1TL

Tel: 0870 241 6468
www.tvlicensing.co.uk

National Debtline
(Helpline for people
with personal debt problems)

Tel: 0808 808 4000
www.nationaldebtline.co.uk

YOU WILL ALSO FIND THE FOLLOWING SERVICES LISTED IN THE PHONE BOOK.

Citizens advice bureaux: Offering impartial and confidential advice on issues such as debt, money problems and welfare benefits. Most bureaux have trained advice workers who can help with budgeting, negotiate with creditors etc.
www.adviceguide.org.uk and www.citizensadvice.org.uk

Community Legal Service Direct: A directory of agencies providing legal advice in your area. Check your local library or the website. www.clsdirect.org.uk or ring 0845 345 4345 for legal help and advice.

Department for Work and Pensions/Social Security Offices: Find your local office to claim most benefits if you are unemployed.

Job Centre Plus: Find your local office to claim most benefits if you are unemployed.

Local council: Provides a range of services. Contact your council to claim housing benefit and council tax benefit or make a housing application.

Trading Standards Departments (consumer protection departments): Part of your local council. Contact them to complain about harassment.

MORE ABOUT US

BACKGROUND

Business Debtline (BDL) is part of the Money Advice Trust (MAT), a charity formed in 1991 to increase the quality and availability of free, independent money advice in the UK. We work in partnership with government, the private sector and the UK's leading money advice agencies to:

- Increase the availability of money advice
- Improve its quality
- Improve the efficiency and effectiveness of its delivery.

MAT is recognised by both the government and private sector as a leading organisation promoting free, independent money advice. There are four key aspects to MAT's work:

- 1 Advice provision via National Debtline and Business Debtline
- 2 Ensuring high quality money advice through training and support for advisers
- 3 Fundraising
- 4 A catalyst for improving efficiency and effectiveness within the debt advice sector.

To ensure that a high standard of service is maintained, all BDL advisers receive an intensive induction and training programme when they join the service.

BUSINESS DEBTLINE: OUR AIMS AND SERVICES

Business Debtline aims to provide a high quality service. You can expect:

- The attention of approachable advisers who are trained to a high standard
- A guarantee that any information you give about your situation will be kept strictly confidential. Records of our calls are kept on a database. This means if you need to contact us again you don't have to tell us about your situation all over again. Your details are not passed on to any other organisation without your permission. We do ask your permission to be contacted by a third party research organisation, but only for the purpose of a telephone or written questionnaire on the quality of our service.

However, you do not have to tell us anything, such as your name and address if you would prefer not to, you can remain completely anonymous. Please contact us if you do not want us to keep your details on file. If we do not hear from you we will take it that you agree to us doing so

- **Prompt attention.** Although our lines are very busy we will do all we can to answer your call promptly
- **Non-discriminatory practice.** Business Debtline is committed to equality in all its services and will tackle prejudice and discrimination to ensure this.

If you are not satisfied with the service you receive, contact the Business Debtline Team Leader. Please remember our lines can be extremely busy and you may have difficulty getting through to an adviser.

If you wish to make a complaint or have any ideas on how to improve our services, please write to:

Team Leader
Business Debtline
Tricorn House
51-53 Hagley Road
Edgbaston
Birmingham B16 8TP

We have a complaints procedure and guarantee your complaint will be given full consideration.

FUNDERS

The Money Advice Trust would like to thank the following funders for their generosity in supporting BDL:

- Abbey Business
- Alliance & Leicester Commercial Bank
- Bank of Scotland
- Barclays
- British Bankers' Association
- Clydesdale Bank
- HSBC
- Lloyds TSB Business Banking
- NatWest
- DTI Small Business Service
- The Co-operative Bank
- The Royal Bank of Scotland
- Yorkshire Bank.

freephone 0800 197 6026

Monday to Friday during business hours

Business Debtline

Tricorn House

51-53 Hagley Road

Edgbaston

Birmingham B16 8TP

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Price: Free to individuals; there is a charge to agencies.

Whilst we endeavour to keep our information packs and factsheets as up-to-date as possible, Business Debtline cannot be held responsible for changes in legislation or for developments in caselaw since this edition was issued.

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ENGLAND & WALES



**Money
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Trust**