

# Chapter 06:

## Dealing with debts

### 6.1 Introduction

Domestic violence (including financial abuse) often leads to unmanageable levels of debt<sup>43</sup>. Data from the Office for National Statistics (1999) show that women who have experienced domestic abuse are twice as likely to be in arrears with essential bills, and/or to have

borrowed money from a variety of sources to pay for essential items<sup>44</sup>. In this chapter we look at the process and options for dealing with debt, indicating where specialist advice might be advisable or – in some cases – essential; and where to access this, if needed.

### 6.2 Assessing the need for support

The survivor's ability to manage any debts she may have will depend on the income she has available to her and her level of confidence and knowledge in managing money. The first step to providing any advice is, therefore, to go through her income and expenditure in some detail, and – if necessary – help her to plan a sustainable budget. (See Chapter 5 for more on budgeting and money management, including a sample budget.)

Itemising a budget will enable an assessment of how serious the problem is, and what support might be needed. Support needs can broadly be categorised into Low, Medium or High: the following Table indicates the kinds of problems which might be included at each level, and the appropriate interventions in each case.

*I was having money problems after divorcing after 19 years of marriage... Basically everything from the marriage was in my name so when I left I gave them one last full payment but then as the weeks and months went on, the debts built up... The loans were fine, it was the things like the credit card and the bank... I've always been very good at paying stuff. It was just that they wanted all of the money every month, and the interest kept piling on and piling on, and then the red letters started to come, and it was a case of "We want our money now" and I tried to sort it out myself and it didn't work... **Maleka***

<sup>43</sup> Westaway and McKay, 2007; Wilcox, 2006; as well as data from DAME.

<sup>44</sup> Cited in Westaway and McKay, 2007.

Level of need	What this means	Suggested interventions
Low	Client is managing on current income and budget is sustainable.	Give information about services, money advice leaflets, etc. No further intervention needed.
Medium	Client is trying to pay bills and cope with debt, but finding it difficult to cope. Situation likely to deteriorate without support.	Assist in reviewing income and expenditure and setting a realistic budget. Signpost to appropriate sources of help; e.g. Citizens' Advice Bureau, Money Advice Service, etc. (see Chapter 12 for contact details and more information).
High	Client unable to manage bills, and fails to pay for essentials such as rent, council tax, and utility companies.	Signpost or refer <sup>45</sup> to suitable agency for help.

### 6.3 Priority and non-priority debts

Dealing with debt is a specialist area which often needs to be taken to qualified advisers. It is useful, however, to have a basic understanding, in order to feel confident in identifying the danger signs which indicate that urgent action might be needed.

Debts are known as “priority debts” or “non-priority debts”, based on the consequences of failing to pay them. Priority debts are ones where serious action could be taken against the survivor if she does not pay what is owed; for example, she could lose her home, be disconnected from a service, bailiffs could seize goods, or she could even go to prison. Priority creditors have considerable power to enforce debts.

When making offers to priority creditors, the debtor is not in a good position to negotiate what she can realistically afford because of the actions the creditors have available to them. It is more likely that the creditor will state the minimum amount and timescale they are

prepared to accept, and this varies considerably; for example, mortgage arrears could be spread over the remaining period to repay the mortgage, which could be 20 years; however, with council tax arrears, the local authority is more likely to want payment within one or two years. Specialist money advisers often get a better ‘deal’ for repayment than an individual. It might be that you have to revisit the budget to see if some non-essential expenditure could be reduced while priority creditors are repaid; or risk the consequences of not doing so.

<sup>45</sup> “Signposting” means providing contact details of appropriate agencies and leaving her to make arrangements for taking this further: Direct referral – i.e. contacting the other agency yourself on her behalf – could be more appropriate and effective in some circumstances; for example, she might be so traumatised by the abuse she has experienced that she finds it difficult to take action; she might have difficulties with communication if her first language is not English, or if she has a sensory or learning impairment; or her financial situation may be so complex that an intermediary is advisable.

Priority debts include the following:

<b>Priority debts</b>	<b>Potential consequences of non payment</b>
Mortgage arrears	Repossession of the property.
Rent arrears	Eviction from the property.
Secured loan arrears	Repossession of the property.
Council Tax arrears <sup>46</sup>	Deduction from wages/benefits; bailiffs seizing property; imprisonment.
Utilities arrears (i.e. gas, electricity)	Disconnection of supply.
Magistrates' court fines	Deduction from wages/benefits; bailiffs seizing property; imprisonment.
Social Fund loan, tax credits, or other benefits overpayments	Deduction from tax credits or most types of benefits.
Maintenance	Deduction from wages/benefits; bailiffs seizing property; imprisonment.
Income Tax , National Insurance and VAT arrears	Bailiffs seizing property; bankruptcy.
Hire purchase arrears	Repossession of the goods.
TV License arrears	Court fine; bailiffs seizing property; imprisonment.

Non-priority creditors have less power to enforce debts and usually have to obtain a County Court Judgment (CCJ) from the court before they are able to take further enforcement steps.

Non-priority debts include things like:

- credit card and store card payments;
- unsecured loans;
- bank overdrafts;
- home-collected credit from "doorstep lenders" such as Provident;
- catalogue repayments;
- money borrowed from family or friends.

None of these can be ignored but they do not need to be dealt with as a first priority. However, because these creditors have less power to enforce the debts, they are likely to be very persistent in contacting clients for payment, often giving them the impression that these debts need to be paid in preference to rent, utility bills or other priorities. One indication that specialist help may be needed is if the survivor is making payments to credit card and loan companies while allowing priority payments to fall behind.

<sup>46</sup> That is, a loan which is secured against property – usually one's home.

## 6.4 Liability for debts

Establishing liability for a debt is a complex area, particularly where financial abuse may be involved. Each person is usually responsible for any loans or liabilities that are in their name only, whether or not they are married. This will also include, for example, a partner's use of the client's credit card or store card, whether or not he was named as a second user.<sup>47</sup>

*I didn't have basically a leg to stand on, that is what my solicitor said, because it was all in my name and I had no proof of where the loan money went, etc. The credit card was in my name and it said "Sainsbury's" on it and I couldn't prove it was basically him. And he's in a lot of debt as well, so I wouldn't get anything out of it.* **Janice**

Where money has been borrowed or debts incurred in joint names, "joint and several liability" will apply; that is, both parties are held liable, and either or both can be chased for the full amount of the debt.

When a survivor has a credit card on which her partner is an authorised user, and she wishes to continue to use that account, (or is unable to close it because of an unpaid balance) she should certainly be advised to remove the partner's name from it (which she can do without his permission) as soon as possible.

In some cases, such as utility arrears, even if the bills are in one person's name, the utility company

will take the view that as the partner also lived there, she was a 'beneficial user', and therefore liable to pay for some of the use. Council Tax bills will be treated in the same way if the home was shared.

Some survivors of abuse might have been persuaded or coerced into taking on financial commitments on behalf of their partners – for example, she might take out a loan in her name but for his use. There is, however, no general acceptance of domestic violence as a defense against this liability. While people are not held responsible for credit for which they have applied for under duress, it is difficult to gather the evidence necessary to prove undue influence, coercion or duress and might be easier, in practice, to seek another method of discharging the debt (see below).

Joint liability also applies to joint bank accounts. The survivor should aim to close any joint accounts as soon as possible after separation to reduce the risk that the partner/abuser will carry on spending money, and perhaps increasing an overdraft for which the survivor will also be liable.

Ideally, on separation, both parties should try to agree quickly on how to deal with any outstanding joint debts in order to avoid the creditors taking enforcement action. However, in cases of abuse, this ideal can only rarely be achieved (for more on closing and opening bank accounts, see Chapter 5).

## 6.5 Documentation

The survivor might have left all documentation relating to her debts behind in her old house; or the abuser might have it, so it is unavailable to her. In some cases, she might be able to

arrange for the police to escort her to visit her former home to pick up essential items, and if so, she should also try to find any documentation relating to financial issues.

<sup>47</sup> However, if she was secondary user on his cards, the reverse applies, and she will not be legally liable for debts on those cards.

However, in practice this might be impossible due to the risks involved.

If the survivor already has, or is able safely to collect, relevant documentation, ideally this should include any record she may have of past or ongoing enforcement action. Those who have changed addresses several times often find it difficult to keep track of what enforcement

action might have been taken and this makes it much harder to offer advice.

If documentation is not available, one option for the survivor would be to apply for a credit report which should list any applications for credit and outstanding debt. These can be obtained from a credit reference agency such as Experian or Equifax.<sup>48</sup>

## 6.6 Options for dealing with debt.

If, after working out a sustainable budget, and trying to trim back on less essential spending, it is clear that there is simply not enough left to pay off debts and arrears, there are a number of options, each of which is more or less suitable depending on the individual's circumstances. Here we give an overview, only, and the survivor should be encouraged to consult a professional money advisor before taking any of these steps, as most of them have long-term implications.

Possible actions include **debt repayment**, when the individual may be able to pay off some or all of the debts, but at a reduced rate, by employing one of the following strategies:

- offering pro rata or token payments;
- setting up an Individual Voluntary Agreement (IVA);

- opting for a Debt Management Plan (DMP).
- offering a one-off lump sum payment under a Full and Final Offer; (e.g. as a result of a charity grant) whereby the remaining debt is written off

Alternatively, when the survivor has no realistic prospect of paying off the debts and needs a long-term solution which will in effect give her a fresh start, there are **debt relief** options, including:

- Debt relief orders (DROs);
- Administration orders;
- Bankruptcy.

Each of these is explained below, together with an indication of the conditions and circumstances which might make each of these an appropriate option.

## 6.7 Strategies for debt repayment

### A. Offering *pro rata* or token payments

This is one of the simplest strategies to reduce payments being made to creditors. The client can either offer a *pro rata* amount to each of her non-priority creditors, based on her available income after everything else has been paid for and the relative size of each debt; or

offer a token payment of £1 or £5 a month to each when even pro rata offers are not possible. See below for an example of a letter offering token payments. The sections in italics should be personalised to suit the survivor's particular circumstances

<sup>48</sup> See [www.experian.co.uk](http://www.experian.co.uk) or [www.equifax.co.uk](http://www.equifax.co.uk)

## Sample letter to creditors

Date:

Dear Sir or Madam

**[Account Number or Reference]**

I am currently experiencing financial difficulties and unfortunately I am unable to pay the full amount due monthly on this account.

*I have recently separated from my partner and, as a result, have had to give up my job and claim benefits, reducing my income significantly.*

I am hoping to be back on track financially quite soon, but I would be grateful if you would accept reduced payments of £5 per month until my situation improves. I would also ask you to freeze interest and other charges. As a gesture of good faith I enclose my first payment: please could you send me a payment book or advise as to how I should make payments.

I enclose a copy of a financial statement/budget which has been drawn up with the help of *[insert organisation name]* who are a *[insert type of service]* and who are helping me to resolve my finance issues.

I will inform you as soon as my circumstances improve enough for me to restart my full monthly payments.

Yours faithfully

This is an informal and short-term solution only, but can be useful for those whose circumstances are in a state of flux. The creditor might agree to freeze interest and charges, but this will be at their discretion.

The letter should be supported by a financial statement/budget which clearly shows the creditor that the survivor has worked out what she can

reasonably offer to pay based on her income and expenditure; i.e. total income minus total outgoings = weekly balance available to pay the creditor. It is important that the living expenses listed are seen as reasonable: a creditor will not be sympathetic if, for example, the survivor appears to be spending a lot on non-essential items. See below for an example of a financial statement that could be sent to creditors.

## Sample financial statement/budget

Name: Ms A N Other

Address: 1 Any Street, Anywhere

Household: 1 adult, 2 children

<b>Weekly/Monthly Income</b>	<b>£</b>	<b>Weekly/Monthly Outgoings</b>	<b>£</b>
Child Tax Credit	105.25	Rent	112.00
Income Support	62.50	Electricity	15.00
Child Benefit	33.70	Gas	15.00
Housing Benefit	100.00	Fine	6.00
		Life Insurance	5.50
		TV Rental	11.50
		TV License	3.00
		Housekeeping/Food	70.00
		Telephone	10.00
		Essential clothing/shoes	12.00
		Travel (to get children to/from school)	15.00
		School lunches	10.00
		Other: non regular essentials e.g. school costs, birthdays	5.00
<b>Total income</b>	<b>£301.45</b>	<b>Subtotal</b>	<b>£290.00</b>
		<b>Priority payments:</b>	
		Council Tax arrears	4.00
		Utilities arrears	4.00
		<b>Non priority payments:</b>	
		Personal loan	1.00
		<b>Subtotal</b>	<b>9.00</b>
		<b>Total outgoings</b>	<b>299.00</b>

Total income: £301.45 minus total outgoing: £299.00

**= Total money available to pay the creditor: £2.45**

### B. Debt Management Plans

A debt management plan (DMP) is for those who have a little more disposable income after paying for day to day essentials. They usually only cover non-priority debts. An individual can arrange a DMP through one of the free organisations who set up DMPs such as Consumer Credit Counselling Service (CCCS) or Payplan (see Chapter 12). It is advisable to avoid debt management companies which charge a fee, such as the one which contacted Celia:

*Someone contacted me, and came to see me and went through all my debts. I was being constantly bothered by creditors every single day. But then he told me it would be £750 to deal with it, and it didn't seem right, so I didn't go through with it. I am usually very gullible, but he asked for my bank card number, and I said, I won't give it to you. I thought that was a lot of money just to get me out of debt.* **Celia**

One of the benefits of this option is that the individual makes only one monthly payment to the organisation, which divides it between the creditors on a pro rata basis. In the majority of cases, where a DMP has been agreed, the creditors waive or significantly reduce charges; however, they do not have to do this – but anyone with a DMP should be made aware if any charges that are being applied. For further

## 6.8 Options for debt relief

If the survivor has no realistic prospect of paying off the debts and needs a long-term solution which will, in effect, give her a fresh start, it might be more appropriate to go for one of the debt relief options, which result in most debts being discharged, allowing her to have a clean slate at the end of the year. These options (and

information on DMPs, see the CCCS website<sup>49</sup>.

### C. Individual voluntary agreements (IVAs)

An IVA is a formal agreement between the individual and her creditors to pay all or part of her non-priority debt over a set period of time. Payments are made through a licensed debt specialist called an insolvency practitioner (IP) who shares out the payments between creditors as is agreed when setting up the IVA. The benefit of this approach is that any action against the person in debt, such as court action, will normally be stopped once an IVA is in place and, importantly, a significant proportion of the debt will be written off - usually between 25 and 50%. There will however, be costs associated with setting up and managing an IVA and it will affect the individual's credit rating. Specialist debt advice from a reputable free money advice service is advised before considering this option.

### D. Offering a one-off lump sum payment under a Full and Final Offer

In some circumstances it is possible to raise a lump sum, e.g. by selling an asset such as a car, because a close relative or friend wants to help, or because it has been possible to get a grant from a charity. However, this amount might not be enough to repay the debt in full but could go a significant way towards this. If this amounts to between 30 and 50% of the total outstanding debt many creditors will accept this payment in 'Full & Final Settlement' and the remaining debt will be written off.

choosing between them) will usually need to be dealt with by a professional money adviser.

### A. Debt relief orders:

A Debt Relief Order (DRO) is a simpler, quicker and cheaper alternative to bankruptcy. DROs are aimed at debtors with low incomes

<sup>49</sup> See [www.cccs.co.uk/InfoCentre/EnglandandWales/DebtSolutions/Debtmanagementplan.aspx](http://www.cccs.co.uk/InfoCentre/EnglandandWales/DebtSolutions/Debtmanagementplan.aspx)



and few assets. They are available for those whose total unsecured liabilities do not exceed £15,000, and who have limited income and savings; i.e. the debtor's total assets should not be greater than £300<sup>50</sup>, and her disposable income, (after deduction of normal household expenses) should not exceed £50 per month.

The fee is currently £90, but this can be paid over 6 months.

A DRO can only be applied for through an approved intermediary<sup>51</sup>. If a DRO appears to be appropriate, the intermediary will be able to complete the online application, in which the debts must be listed. There is an application fee, which can be paid in installments. At the end of a year, if there has been no change in the individual's financial situation, the debt is discharged.

*All my finances are sorted at the moment and once this DRO is done, I don't owe no-one nothing, which is absolutely brilliant, and I can start afresh in the new place and won't get behind with my bills...* **Suzannah**

### B. Administration orders:

Administration Orders can be used to deal with debts of £5,000 or less, and are suitable for those who can afford to make regular payments towards their debts. They are applied for through the county court, and there must be at least one County Court Judgment (CCJ) in place. Regular weekly or monthly payments are then made to the court, either for the full amount owed or a percentage of it, and the court shares this money out between the creditors. Interest and other charges no longer apply, and creditors cannot take any further action without permission from the court. However, a small fee will be charged by the court for processing the weekly or monthly payments which is 10% of the amount of each agreed payment.

### C. Bankruptcy

Bankruptcy is another form of debt relief, and there are no limits on the amount of debts or assets the applicant can have. Any assets are taken over by the Official Receiver<sup>52</sup> and can be sold to pay the creditors, including the home, if it is owned. Bankruptcy has to be applied for through the court<sup>53</sup>, by completing a petition and a form (called the statement of arrangements). It can be expensive, as there is a court fee as well as a deposit required to cover the cost of managing the bankruptcy. The fees currently are £525 for management and £175 for court costs, but the latter is waived if the applicant is in receipt of Income Support. Some charitable trust funds might be able to help with the fees for bankruptcy applications.

After a period of time – usually a year – the debtor is discharged and does not have to make any further payments to creditors. However, where there is enough income, payments might have to continue for up to three years. The bankrupt person is subject to certain restrictions during this time, and there might also be implications for current and future employment.

*[I talked to the advisor] about the fact I was being made bankrupt, what I was allowed to do and what I was not allowed to do, how to go about it, what was expected of me, how long it would take. Whether I would have a car or not and the impact of that; whether I had savings or not. She basically went through it all and decided it was my best option because I didn't really have any assets and the debts were very high. So she told me how to go about it... They also told me my bank accounts would be scrutinised... I wasn't sure whether I would have to give exact figures because I didn't have the paperwork with me. She said I should overestimate it and round it all up so that I wouldn't be liable for anything not on the form... I knew I would never be able to pay it off so I felt [bankruptcy] was my best option....* **Elissa**

<sup>50</sup> They may, however, own a car worth up to £1,000.

<sup>51</sup> An 'approved intermediary' is a debt advisor who has been authorised by the Insolvency Service to process DROs.

<sup>52</sup> An officer of the bankruptcy court.

<sup>53</sup> Not all courts deal with bankruptcy applications. See [www.direct.gov.uk/en/Dio11/DoltOnline/DG\\_10035250](http://www.direct.gov.uk/en/Dio11/DoltOnline/DG_10035250)

The **Individual Insolvency Register** contains names and details of:

- bankruptcies that are either current or have ended in the last 3 months;
- current individual voluntary arrangements and fast track voluntary arrangements;
- Debt Relief Orders;

- current bankruptcy/debt relief restriction orders and undertakings.

It is important to note that the client can request that her address is withheld if her name is listed on the Register, so that her abuser cannot trace her whereabouts.

## 6.9 When action is taken by creditors

**Bailiff enforcement** is one way in which creditors try to get debts repaid. It is most commonly associated with collection of council tax arrears, or taxes owed to HMRC, but is also sometimes used for other unpaid debts, usually as a last resort. Bailiffs have powers granted to them by warrants issued by a court (unlike other kinds of debt collectors). Bailiff collection, or the threat of it, is the source of much anxiety, fear and shame: there is the physical threat of a stranger trying to gain access to your property, and also potential embarrassment if neighbours find out about it.

Bailiff action should always be taken seriously as it suggests that the financial situation is out of control; moreover, personal property could be taken and sold to repay money owed. Clients who are being threatened by action from bailiffs should take advice from professional advisers. If a visit from bailiffs is likely, it might be helpful to know what to expect.

Bailiffs should not normally force entry to a home, but should only enter by invitation, or through an unlocked door or open window. If they do gain legal access, the bailiffs will make a list of property and goods of value and might ask the person to sign a 'Walking Possession Agreement', allowing the debtor to keep the belongings as long as she or he adheres to the payment agreement. If it is not adhered to, however, the bailiff can return and force entry, taking the listed items. The police might also

attend on this occasion, in order to prevent a breach of the peace; (**not** to assist the bailiffs).

All bailiffs must be registered and many belong to a professional body that requires them to abide by a code of conduct. However, some people's experience of bailiffs is negative and confusing:

*... They are writing to you and keep on harassing you and I don't like bailiffs coming round... Once it happened, not now but a while ago... One morning, my son said, Mother, Bailiffs at the door, and if you don't open the door we are going to break it down... and when I came in they were standing in my sitting room, and my whole house stuff was gathered in my sitting room, and they said, we are going to take this. I had to phone my friend, collect £1500 to give to them... I had to go and get the money... they didn't want to wait, but said they would wait only half an hour if I went to get it. **Kishwar***

Bailiffs will add their costs onto the debts they are collecting, and are often unwilling to negotiate. However, if the debt is for council tax, it might be possible to negotiate with the council and persuade them to take the debt back from the bailiffs so that a realistic agreement can be set up.

**Debt collectors** do not have the same powers as bailiffs. They cannot enter homes or take

possessions. They can, however, attempt to make contact with the debtor to discuss how the debt will be repaid.

Survivors of domestic and sexual abuse may feel particularly distressed if creditors are very persistent in contacting them and asking for payments. It is important that survivors are not pressured into making payments, but stick to the agreed repayment plan and/or seek advice from an appropriate agency.

Those with outstanding debts can insist creditors make all contact through chosen agency working with client rather than directly.

*... Debt collectors scare me...I, they really scare me. Leah*

*[Mobile phone company] are chasing me for £600 or something. I don't remember having [any phone from them]. ... But they are harassing me, every morning they are coming, texts, letters... I am worried they are going to knock on my door one day, - they know my address because they send me letters.*

**Kishwar**

Eventually, if money is owed and not paid back, creditors may take court action in an attempt to get their money back. There are many different types of court action depending on the type of debt. For example, rent arrears may result in the landlord seeking a 'possession order' through the court to get the property back; whereas debts such as credit card arrears may result in a County Court Judgment (CCJ) being made by the court to enforce payment (whether in whole or through regular payments).

Either situation should be preceded by a letter warning that action will be taken if payment is not made. However, if a survivor has had to leave her home, it is worth considering whether she might have missed such correspondence, and that court action could be progressing in her absence.

As soon as it becomes apparent that court action is threatened or is taking place, it is vital that the survivor seeks advice from a professional money advisor.

## 6.10 Time limits on enforcement of debts

Survivors of abuse may move frequently from one form of temporary accommodation to another, and for reasons of safety will often not inform anyone of their new address. For that reason among others, the client may not hear from her creditors for some time, and might therefore believe she has escaped her debts.

Debts do not, however, simply "go away"; though after 6 years, they cannot be enforced in all circumstances<sup>54</sup>. The decision to ignore creditors should not be taken without some thought as there will be consequences; for

example, it may impact on an individual's ability to obtain credit, or a mortgage, in future.

Ideally, anyone tempted to ignore her creditors should take professional advice, and consider other options first.

*If the breakdown of the marriage wasn't enough, just to find out actually how much debt you're in - to still have it hanging over your head isn't very nice, but at least now I feel I have it under control. Janice*

<sup>54</sup> Due to the Statute of Limitations – for more information about this see [www.hmrc.gov.uk/manuals/ihtmanual/ihtm28384.htm](http://www.hmrc.gov.uk/manuals/ihtmanual/ihtm28384.htm)

Further help may be found at one of the following:

- **The Direct Gov website**<sup>55</sup>
- **National Debtline** provides free, confidential, and independent advice on 0808 808 4000. NDL can also assist in preparing budget information to provide to creditors, and can refer clients to a suitable source of face-to-face advice. [www.nationaldebtline.co.uk](http://www.nationaldebtline.co.uk)

## 6.11 Summary

- Domestic violence often leads to debt.
- Before deciding how to deal with the debts, the survivor should be helped to work out a sustainable budget.
- It is important to distinguish between priority and non-priority creditors on the basis of the potential consequences of non-payment.
- There are several options for repaying debts at a reduced rate.
- For those who are unable even to make reduced payments, there are debt relief options, including Debt Relief Orders and bankruptcy.
- Survivors are advised to consult specialist debt agencies before finally deciding between these options (and for some courses of action, specialist advice may be essential).
- Survivors should not ignore debts: payment could be enforced by bailiffs or through the courts.

<sup>55</sup> See [www.direct.gov.uk/en/MoneyTaxAndBenefits/ManagingDebt/PlanYourWayOutOfDebt/DG\\_10013291](http://www.direct.gov.uk/en/MoneyTaxAndBenefits/ManagingDebt/PlanYourWayOutOfDebt/DG_10013291)