

Priority debt strategy chart

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Using this list of sanctions as a guide, it is usually fairly easy to identify which are priority debts.

The chart sets out:

- the main priority creditors;
- gives typical repayment term information;
- suggests negotiation tactics; and
- sets out the final creditor sanctions.

Priority debts Normally money advisers will treat a debt as a priority where non-payment can result in the client:

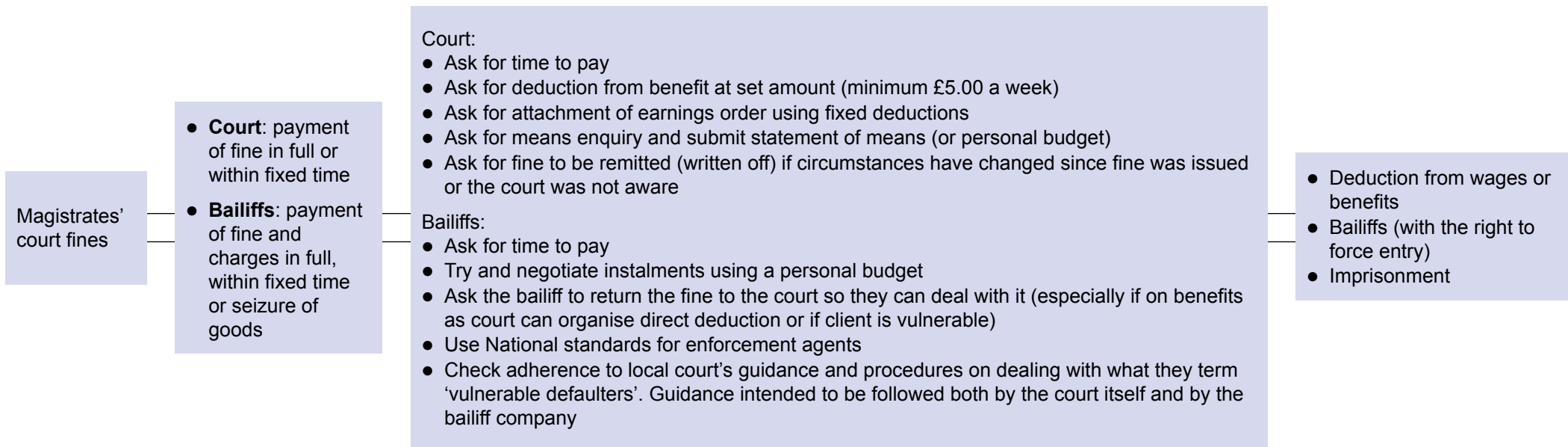
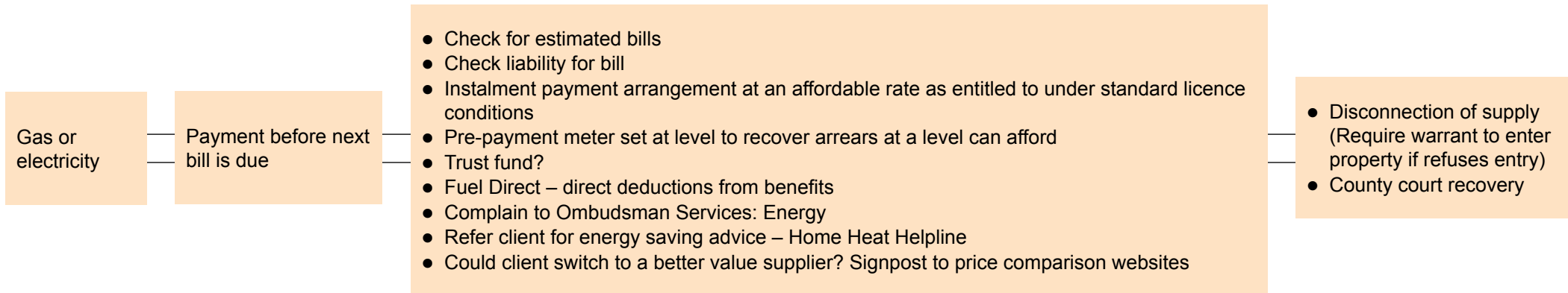
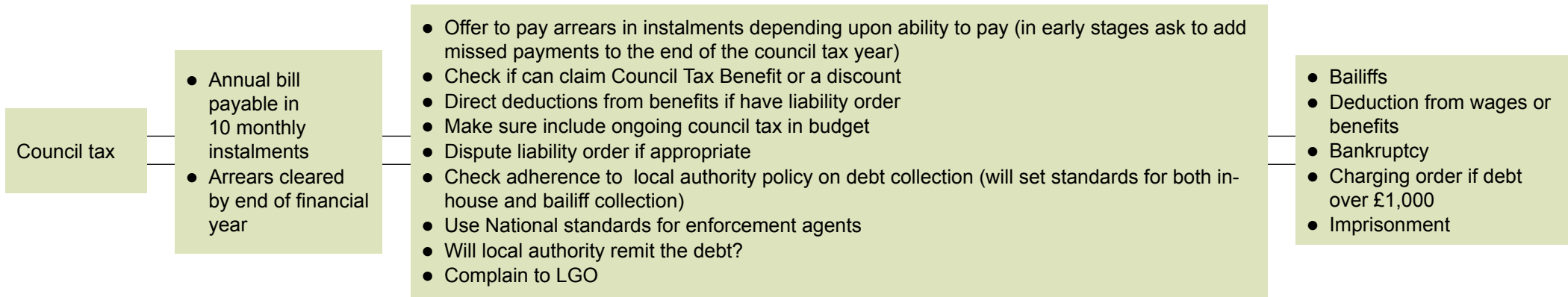
- being disconnected;
- losing their home;
- losing essential goods or services; or
- being imprisoned.

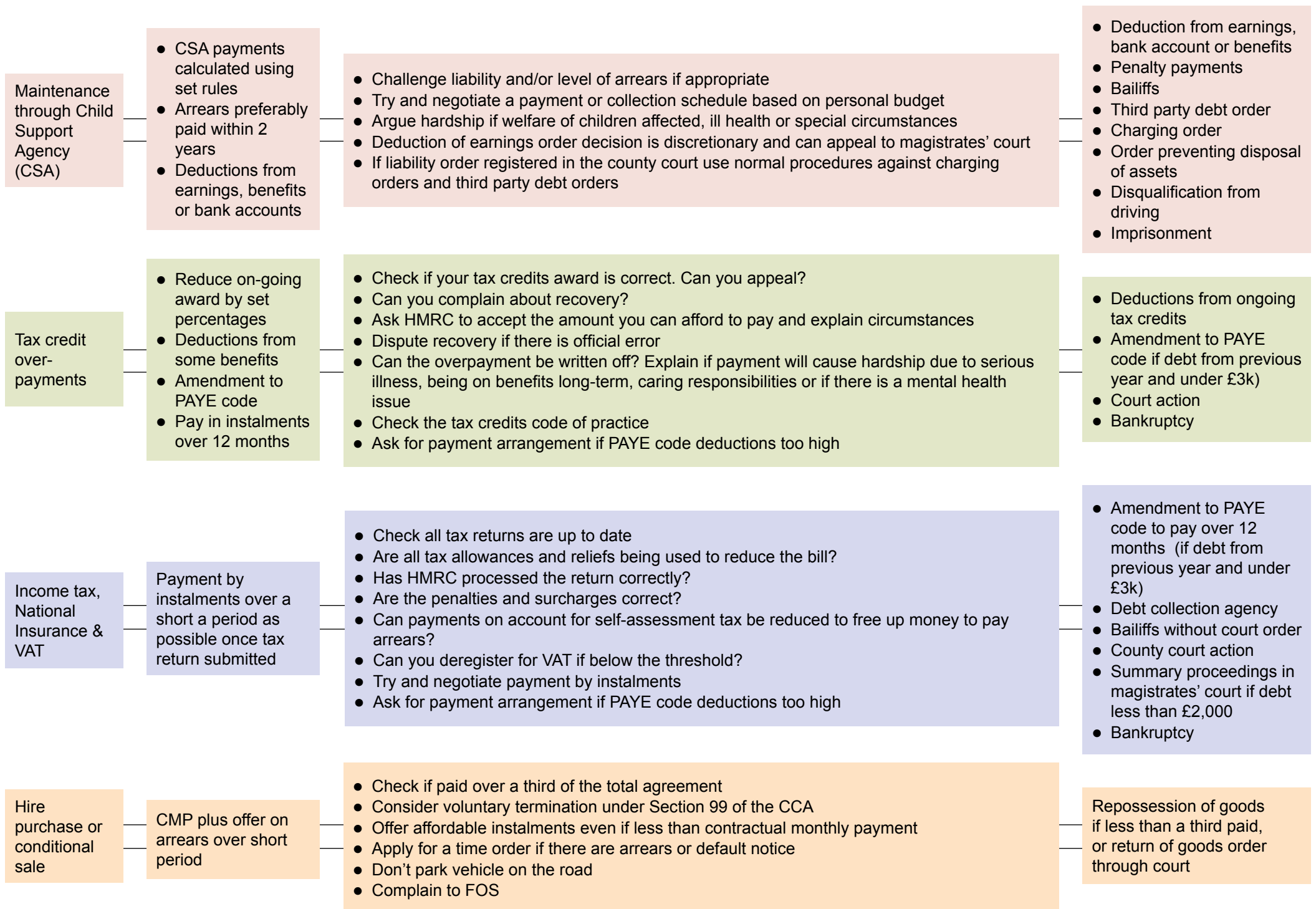
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Abbreviations

CSA	–	Child Support Agency
CCA	–	Consumer Credit Act 1974
CMP	–	current monthly payment
DEO	–	Deduction from Earnings Order
DWP	–	Dept for Work & Pensions
FOS	–	Financial Ombudsman Service
HB	–	Housing Benefit
HMRC	–	HM Revenue & Customs
LGO	–	Local Government Ombudsman
MCOB	–	Mortgage Conduct of Business rules
SMI	–	Support for Mortgage Interest,
VAT	–	Value Added Tax

Debt type	Typically, what will the creditor want?	Strategies and tactics	Possible sanctions
Mortgage	Arrears cleared or repossession of property	<ul style="list-style-type: none"> ● Offer CMP plus arrears over “reasonable period” up to life time of mortgage (C&G v Norgan) ● Mortgage rescue scheme and the Preventing repossession fund (England only) ● Check if can claim SMI ● Direct deductions from benefits for arrears ● Is lender following Mortgage pre-action protocol? ● Lender forbearance options, such as payment holiday or capitalisation of arrears ● Remortgage ● Sell property or assisted voluntary sale ● Use MCOB & complain to FOS ● See <i>Mortgage Strategy Chart on the IMA website for more help</i> 	Repossession and eviction from home
Second mortgage or secured loan	Arrears cleared or repossession of property	<ul style="list-style-type: none"> ● Apply for time order if loan regulated under CCA ● Offer CMP plus offer to clear arrears over reasonable period up to lifetime of loan ● Check if can claim SMI (many secured loans are not eligible) ● Direct deductions from benefits for arrears ● Is lender following Mortgage pre-action protocol? ● Is lender following OFT Second charge lending guidance? ● Remortgage ● Check if there is a local Preventing repossession fund (England only) ● Sell property ● Complain to FOS ● See <i>Mortgage Strategy Chart on the IMA website for more help</i> 	Repossession and eviction from home
Rent	<ul style="list-style-type: none"> ● Social landlord: minimum rate direct deduction from benefit ● Assured tenancy: if tenant has more than 2 months arrears can get mandatory possession) 	<ul style="list-style-type: none"> ● Check the type of tenancy and which mandatory or discretionary grounds for repossession apply ● Check if can claim Housing Benefit (HB) and entitlement is accurate ● Can discretionary housing fund help? ● Get HB paid direct to landlord ● Direct deductions from benefits for arrears ● Check if there is a local Preventing repossession fund (England only) ● Pay ongoing rent and make offer to pay back the arrears at amount you can afford ● Rent pre-action protocol followed (if social landlord)? ● Check for disrepair counterclaim 	Eviction from home
Social fund loans & benefit over-payments	<ul style="list-style-type: none"> ● Direct deductions from benefits at fixed amount ● Instalments if not on benefits 	<ul style="list-style-type: none"> ● Ask DWP to extend payment period if not at maximum repayment period of 104 weeks ● Check if decision can be appealed ● Offer instalments based on a personal budget and explain why increased payments will cause hardship ● Any grounds for remittance (write off) due to extreme hardship? 	Deductions from most benefits





Maintenance through Child Support Agency (CSA)

- CSA payments calculated using set rules
- Arrears preferably paid within 2 years
- Deductions from earnings, benefits or bank accounts

- Challenge liability and/or level of arrears if appropriate
- Try and negotiate a payment or collection schedule based on personal budget
- Argue hardship if welfare of children affected, ill health or special circumstances
- Deduction of earnings order decision is discretionary and can appeal to magistrates' court
- If liability order registered in the county court use normal procedures against charging orders and third party debt orders

- Deduction from earnings, bank account or benefits
- Penalty payments
- Bailiffs
- Third party debt order
- Charging order
- Order preventing disposal of assets
- Disqualification from driving
- Imprisonment

Tax credit over-payments

- Reduce on-going award by set percentages
- Deductions from some benefits
- Amendment to PAYE code
- Pay in instalments over 12 months

- Check if your tax credits award is correct. Can you appeal?
- Can you complain about recovery?
- Ask HMRC to accept the amount you can afford to pay and explain circumstances
- Dispute recovery if there is official error
- Can the overpayment be written off? Explain if payment will cause hardship due to serious illness, being on benefits long-term, caring responsibilities or if there is a mental health issue
- Check the tax credits code of practice
- Ask for payment arrangement if PAYE code deductions too high

- Deductions from ongoing tax credits
- Amendment to PAYE code if debt from previous year and under £3k)
- Court action
- Bankruptcy

Income tax, National Insurance & VAT

Payment by instalments over a short a period as possible once tax return submitted

- Check all tax returns are up to date
- Are all tax allowances and reliefs being used to reduce the bill?
- Has HMRC processed the return correctly?
- Are the penalties and surcharges correct?
- Can payments on account for self-assessment tax be reduced to free up money to pay arrears?
- Can you deregister for VAT if below the threshold?
- Try and negotiate payment by instalments
- Ask for payment arrangement if PAYE code deductions too high

- Amendment to PAYE code to pay over 12 months (if debt from previous year and under £3k)
- Debt collection agency
- Bailiffs without court order
- County court action
- Summary proceedings in magistrates' court if debt less than £2,000
- Bankruptcy

Hire purchase or conditional sale

CMP plus offer on arrears over short period

- Check if paid over a third of the total agreement
- Consider voluntary termination under Section 99 of the CCA
- Offer affordable instalments even if less than contractual monthly payment
- Apply for a time order if there are arrears or default notice
- Don't park vehicle on the road
- Complain to FOS

Repossession of goods if less than a third paid, or return of goods order through court

Is the debt a square peg?

We call some debts, 'square peg' debts because they do not fit neatly into the priority or non-priority debt categories. This might be because of the type of debt or the circumstances of your client. It is important that you make clients fully aware of any potential consequences of prioritising what other creditors might see as a non-priority debt. You will also need to talk to your client about explaining this to other creditors.

Phone debt

Usually phone debt is treated as a non-priority, particularly because pay-as-you-go mobiles are a flexible solution to a disconnected landline or a discontinued mobile phone contract. There are still areas of the country without a mobile signal, or a mobile phone may not be a reasonable replacement for a landline. Some contracts are part of a bundle of services, including access to the internet and satellite or cable TV and some clients would view these as essential. The need to retain an essential phone service could mean that phone arrears are a priority debt.

Personal debts to friends and family

These should usually be treated in the same way as ordinary non-priority debts (unless the family member has agreed to put the debt on hold). Higher payments may be needed if the debt is causing hardship to the friend or family member, the relationship is going to suffer if the debt is not paid off fast etc. For example, if your client is in debt to the person whose home they are living in – they may be at risk of homelessness if they do not prioritise repayments.

Parking penalty charges

Many local authorities enforce parking penalties under the Traffic Management Act 2004 using Northampton County Court. As you cannot be sent to prison, they will not be a priority debt unless there is at risk of losing essential goods such as a car. Penalty charges

can be difficult to deal with because the local authority can ask the county court to use private bailiffs and if this is unsuccessful, other county court enforcement methods. There is no power to suspend bailiff action or request instalments using an N245. If this debt is being treated as a non-priority, you could try to get the bailiff or the local authority to accept your repayment instalments.

Mortgage shortfall debt

In theory, this is a non-priority debt because the house the mortgage was secured on has now been repossessed. However, shortfalls are often very big and a pro-rata payment arrangement may not be appropriate. There could be a limitations issue if the property was repossessed some years ago. The current home may be at risk if the client has bought again. Consider treating shortfalls differently to other non-priority debts as they can be complex and specialist advice may be needed.

Credit union loans

These are usually a non-priority debt but it can be in the client's best interests to treat credit union debt differently. Clients may be reluctant to make reduced payments because it is their only form of affordable credit. The credit union may ask to be treated differently and this might not be appropriate. This can cause confusion for clients and advisers: Some credit unions may:

- argue that their repayments should be prioritised, or say that they will not accept token repayments;
- threaten to bar members who are in arrears from membership services such as Christmas savings schemes.

Find out the type of loan and the contractual terms that apply. If your client wants to prioritise their credit union debt, make it clear that other creditors are likely to object and explain any other consequences. Prioritising payments may be viewed as a preference in bankruptcy or a debt relief order.

Social fund loans and benefit overpayments

Treat as non-priority debts unless the client is receiving certain benefits. They can by default become priority debts because repayments are deducted at source. If direct deductions are being made from benefit this may mean that there is not enough money to cover normal outgoings or priority debts. Ask for the social fund loan to be rescheduled or a reduction in the repayments of the overpaid benefit.

Tax credit overpayments

Overpayments fall into the priority debt category because repayment deductions can be made from ongoing tax credits, from certain benefits, by reducing the tax code or through the same enforcement methods as income tax. For a small number of clients – those with no ongoing tax credit award, no affected benefits and who are not on PAYE – tax credit overpayments can be a non-priority debt.

Water rates debt

You can no longer be disconnected for water-rates debt so this is usually a non-priority debt. Water debt is a square peg debt because the ongoing charges for consumption need to be included as an essential item of expenditure in a financial statement. Arrears should normally be treated in the same way as other non-priority creditors. If you are dealing with water debt that is billed with rent, you may need to prioritise the arrears repayments. It will depend on the tenancy agreement and you may need specialist advice.

Water companies will usually use the county court to collect their debts but there has been reluctance on the part of the industry to accept their loss of priority status. Challenge aggressive collection activity such as charging order applications, using the High Court to enforce the debt and issuing statutory demands.

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