

# DEBT

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## FREQUENTLY ASKED QUESTIONS

### Are there different types of debt, if so what are they?

Debt falls into two separate categories, Priority and Non-Priority.

#### Priority Debts

Priority debts are the most important debts, if you are in a position where you are unable to pay all of your creditors, it is important that you set aside money for your priority debts before you start paying your non-priority debts. Priority debts include (but this is not an exhaustive list);

- Mortgage/Rent
- County Court Judgments (CCJ's) and/or Magistrate Fines
- Utilities
- Council Tax
- Child Maintenance
- Secured Loans
- Essential Hire Purchase Agreements (washing machine, car)

#### Non-Priority

This term can be misleading, it does not mean that you do not have to pay the debt back and or that your creditors will not expect payment, what it means is that these debts are less important than the priority debts, and that creditors of non-priority debts are limited in what action they can do to recoup the money i.e. they cannot repossess your home, but they could take you to court. Non-priority debts include (but this is not an exhaustive list);

- Credit/Store Cards
- Overdrafts
- Unsecured Loans
- Credit Agreements
- Conditional Sales Agreements
- Catalogue Debt
- Non-essential Hire Purchase goods (e.g. TV's, stereos)

## What if any action can creditors take against me?

Creditors can take different actions against you (please see list below this is not an exhaustive list):

- They can telephone you demanding a payment, and they do this on a repeated daily basis
- If you do not pay on time they can charge you for late payments and any subsequent administration fee's
- They may freeze your account so you are unable to use it
- Issue a default notice (a default notice is a record placed on your file by creditors which states that you have defaulted in some way)
- They may instruct a debt collection agency to chase payment (which can include telephone calls and letters)
- They may threaten to take you to court
- The creditor may issue a CCJ against you will affect your credit rating
- May obtain an 'Attachment of Earnings', which means a deduction will be taken from your wages directly
- May petition for your bankruptcy

## Can I negotiate with creditors?

Yes, you can negotiate with creditors. Most creditors will consider any reasonable request or offer that you make. On occasion you may need to contact creditors several times before they will agree to what you are requesting.

When you enter into negotiations the creditor, it is more than likely that they will want a financial statement (see website for template) from you which will indicate what debts you have, what money if any you will have left over, and whether your situation is likely to improve. It is really important that creditors can see that your request is reasonable therefore you should ensure that;

- You are clear about what you are asking for
- Remember to ask the creditor to freeze the interest accruing on your account, if you do not do this any payment you make will not reduce your debt as the interest will continually be added to your account
- Explain your situation fully i.e. whether you have priority or non-priority debts
- Obtain evidence to support your request

Do not be afraid to ask for help, if you want to negotiate with creditors and would like assistance to do so, please do not hesitate to contact Sunderland Advice Service on 0191 567 4649 or another organisation on our website.

## **A County Court Judgment has been issued against me as I was unable to pay my credit card debt. I have now been threatened with bailiffs by the card insurer what if anything can I do?**

You should try and negotiate with the card issuer as soon as possible. Look at your finances and determine whether you are able to pay the debt in full, if not if you can offer a set amount weekly or monthly to the card issuer.

If the card issuer does not accept your offer, the card issuer will need to apply to their local court for a warrant of execution before they are able to send the bailiffs to remove property from your home in lieu of payment for your debt. In the instance that the card issuers have already completed this act, you will need to apply to your local court to have the warrant suspended.

If however bailiffs do turn up at your home, you do not have to let them in, and they generally cannot force their way into your home. Bailiffs can however enter your property without your permission, if they can do so without breaking in i.e. gaining access through an open window or an unlocked door this is known as 'gaining a peaceful entry'. Bailiffs cannot take from you basic clothing, bedding, furniture or household goods. If they do take items from your home they will be sold at auction in order to pay off your debt.

With regard to rules around bailiffs they are complicated and we recommend that you seek specialist advice from the Citizens Advice Bureau.

## **I am thinking of declaring myself bankrupt. What is the bankruptcy process?**

This is a decision which should not be taken lightly. If you do want to pursue this course of action, a bankruptcy order is made by the courts.

To obtain this order you will need to present to the court a bankruptcy petition. This is usually presented to the court by either yourself (this is known as the debtor's petition); or creditors who are owed at least £750 by you (this is known as the Creditors Petition).

If a creditor's petition is made, and you refuse to acknowledge or agree to the order, a bankruptcy order can still be made. It is in your best interests to fully co-operate, if bankruptcy proceedings have commenced. If you do dispute the creditor's claims, you should try and resolve them before the order is made, as it is extremely difficult and expensive to do so afterwards.

## **Will it cost me money to declare myself bankrupt?**

It does cost money to declare yourself bankrupt there are three fees you may have to pay. The first is a court fee of £120. The court in some circumstances may waive this fee e.g. if you are currently receiving Income Support. The court staff at your local court will be able to advise you if you are exempt from court fees for additional information please go to;

[www.hmcourts-service.gov.uk/courtfinder/forms/ex160a\\_web\\_0709.pdf](http://www.hmcourts-service.gov.uk/courtfinder/forms/ex160a_web_0709.pdf).

The second fee which is payable in all cases is for the administration of your bankruptcy and this costs £250. The third fee is which may be applicable for the statement of affairs to be sworn. If your case is in the County Court no charge is made for this (which forms part of your statement of affairs), however if your case is in the High Court or before a solicitor there is a £7 charge.

If you are married and both of you need to declare yourselves bankrupt, you will both need to pay separate fees. This is the same if you were in a business partnership i.e. each partner will have to pay separate fees; there is one exemption which is if all the parties apply for a joint bankruptcy petition under the Insolvent Partnerships Order 1994.

### **If I am declared bankrupt what are the effects on me?**

If you are declared bankrupt all assets which belong to you are controlled by a trustee, this includes your home. The main disadvantage is the constraints which are forced upon by bankruptcy and having to declare yourself as bankrupt if you enter into particular financial transactions. Once you are discharged from bankruptcy, all constraints upon you are ended.

If you open a new bank or building society account you should disclose the fact that you have been declared bankrupt. The bank may impose restriction on your account. You must not obtain an overdraft facility. Furthermore, if you excess funds in your account i.e. funds available after normal living expenses you must inform the trustee who can divide the funds between your creditors.

### **Can you explain to me what an Individual Voluntary Arrangement (IVA) is?**

IVA's are legally binding arrangements which enable individuals, sole traders or partners (known as 'the debtor') to reach agreements with creditors, and avoid bankruptcy. IVA's are supervised by licensed insolvency practitioners. The agreement usually offers creditors a larger repayment than what they would obtain if the debtor was made bankrupt.

Usually debtor's make contributions to these arrangements from their income over a specified period of time, or from a third part contribution, or another source which would not be available to a trustee in bankruptcy.

As the IVA is a legally binding document it prevents the creditors from seeking other courses of action against the debtor post agreement, as long as the debtor complies with the IVA.

For more information on IVA's please contact the Insolvency Helpline 0800 074 6918 or visit [www.insolvencyhelpline.co.uk](http://www.insolvencyhelpline.co.uk)

### **Is there any action I can take as I was refused credit to buy a new fridge freezer?**

When applying for credit, the shop where you applied will have used a credit reference agency to look at your credit rating; you should have been advised of this. Where it has been refused, you can re-apply to the same company or you can try another company.

If on subsequent applications you are refused it may be that you have a low credit score. To check this you can write to the company that the shop used to check your credit rating, and request a copy of the file they have on you. It is more than likely that you will need to pay a small sum for this report. In the instance that the record is incorrect, you can request that the credit reference agency amend it.

### **I think I am a victim of identity theft as someone else appears to be using my bank card what can I do?**

If you still possess your bank card, you will not have to pay for any goods bought on it without your permission. If however, your card has been stolen, the most you will have to pay is £50, unless you have acted without reasonable care or in a fraudulent manner i.e. you have kept the pin number with your card. Where your card has been stolen you must act immediately, you should contact your credit card company, and you should keep notes of when you contacted them and copies of any subsequent correspondence. Where identity theft occurs you should report the matter to the police as soon as possible and obtain a crime reference number.

For further information about identity theft please visit the [www.identitytheft.org.uk](http://www.identitytheft.org.uk) website.