The AdviceScotland.com Guide for Scots Struggling with Problem Debt

Includes:

- Maximisation of Income
- Drafting a Budget
- Debt Repayment Strategies
- Debt Enforcement Procedures
- Formal Debt Solutions
- Debt Terminology
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Advice Scotland

My name is Alan McIntosh and Advice Scotland is my personal website. I am a Money Adviser and for over 20 years have been working with people who are in debt in Scotland.

I have worked as a volunteer, a trainer, a policy officer and a manager; I have worked for local authorities, Citizen Advice Bureaux, law centres and private sector providers.

I have also represented people in court who were facing eviction and repossessions and have helped 1,000s enter Debt Payment Programmes under the Debt Arrangement Scheme, Protected Trust Deeds and to go Bankrupt.

It is my hope this Guide will help those financially struggling because of Covid 19. You will find in it, ideas, strategies and explanations of what you can do if you are struggling with problem debts. There are also links to my website and videos for further information. I do not give personalised advice, but where I can point you in the right direction, I will. To this end, I have included links to a list of local advice agencies across Scotland, where others working in the Scottish Money Advice sector will help you.

I hope this Guide will be of use and please, if you know anyone who is having problems, share it with them.

Alan McIntosh
January 2021
If you have been affected financially by the Coronavirus, then one of the first steps you need to take is to maximise your income.

What this means is make sure you have as much money as possible coming in and as little as possible going out.

Make sure every penny is a prisoner!

This does not mean you have to live a life of austerity, but don’t spend money you don’t need to and avoid taking on any other financial commitments unless you have to.

The best way to get your finances under control, is to take control.
Spring Clean your Bank Account.

The first thing you should do is check your bank account. Most people, when they are having financial difficulties tend to avoid looking at their bank account, which is the worst thing you can do. Instead, re-familiarise yourself with your current financial commitments and look at what is going out and coming in. Are there direct debits and standing orders that are not essential? What can you cancel, safely, without incurring charges or penalties? We generally do not worry about the pennies when the sun is shining, but when the rain is pouring, it is time to fix the roof. Look over those regular payments. Add them up. How much are they coming to each month? Can you cancel some of them or cut them out? If so, you have already started saving money.
Okay, so you are not cancelling the Netflix subscription.

If you are going to be stuck in the house for the next couple of months and having to make savings, you need something to entertain yourself and your kids.

However, do you need the Premium package at £13.99, that allows you to watch 4 screens? Could the Standard Package at £9.99, where you can still watch 2 screens, not do?

Most of us can make savings if we think about it. It does not always mean doing without, sometimes cutting back is enough.
So, you had a fixed term contract, for your phone or broadband and now it is over: your contract is finished, and you are still with them.

Are you suffering from Financial Stockholm syndrome? Are you getting the best deal you could be getting? Customers who will not leave, even when they can, even if they can get a better deal elsewhere, are what many Firms rely on to charge more than they should.

It is a simple fact; loyalty does not always pay.

Many firms have whole retention strategies and reduced-price deals, designed to keep your business, but if you never leave or threaten to, you may never get offered them.

Don’t be a loyal customer, be a clever one: check your utility and insurance providers, are you in contract? When is your renewal date? Go online and use comparison sites and see if you can get a better deal or call your current provider and advise them your thinking of leaving and see if they can offer you a more competitive deal.
Across the UK, millions of people are not receiving the benefits they should be receiving and as a result are going short.

This is especially the case where someone has suffered a recent change in circumstances, such as becoming ill, changing job, seeing their income drop, moving home or having a baby.

You should, therefore, check you are getting what you are entitled to. One way to do this is contact your local council and ask them who in your area can provide you with a full benefit check, or alternatively use a free benefit calculator, like the one provided below.

Remember, the onus is on you to apply for benefits. If you do not do it timeously, you may be losing money and although benefits can be backdated, often it will only be for a short period of time.
2. Complete a Budget.

Drafting an income and expenditure, showing all your incomings and outgoings each week/month is one of the most important tools you can have when you are sorting out your finances. The reason being is you will never get them in order until you understand them.

Budgets allow you to see everything you have coming in and everything you have going out. This lets you see whether you have enough coming in to pay your essential ongoing liabilities, like food, mortgage, rent, utility and council tax bills.

It also lets you see what is left to pay your debts, like credit cards, loans etc and will help inform how you deal with them.

Draft a Budget
When you are drafting a budget, it is important to ensure you prioritise your expenditure. Certain outgoings are more important than others. So, examples of expenditure you should prioritise are:

- Food and household expenditure.
- Rent and mortgage payments.
- Gas and electricity bills.
- Current council tax payments.
- Building and contents insurance.
- Life Insurance.
- TV Licence; and
- Hire Purchase/PCP agreements for cars.

This is not an exhaustive list, there may be other items. However, all these are examples of your day-to-day expenditure that you should prioritise before paying anything else, even debts.
Debt payments should not be prioritised over other essential expenditure in your income and expenditure. The reason is the purpose is to see if you have enough money coming into pay your essentials first.

What is left after you take your expenditure away from your income, is your disposable income, which can then be used to pay your debts.

If this is enough to make all the minimum payments to your debts, then you will probably be able to manage, but you may want to look at some of the repayment strategies included in this guide.

However, if you cannot maintain all your minimum payments, you may have to look at the debt strategies and solutions in the next section of this guide.
3. Debt Repayment Strategies

Debt Repayment Strategies are not formal debt solutions, in that they are about repaying your debts, but doing so in a way that does not require you to miss any payments, and risk getting an Arrears Notice or Default Notice served on you by your credit provider and possibly damaging your credit rating.

Some of the strategies listed below also involve refinancing in one way or another, so many of them will only succeed if you have not already damaged your credit rating by missing payments or fallen into arrears.

Payment Strategies are also something anyone can do at any point, you do not need to wait to you are struggling and some of them can help you maximise the disposable income you have, by reducing the amount you must pay out to your debts each month.

However, Payment Strategies are not without risk, if you do not address the underlying reason why you got into debt in the first place, especially if you keep borrowing whilst you are using them. In such a scenario, the amount you owe is going to continue increasing and you are more than likely going to end up further in debt.
The Snowball approach is a simple one. It involves you paying down the debts that cost you the most, first. The idea is to reduce how much your debts are costing you each month.

Normally, this will mean paying off the ones with the highest interest first, but not always.

Sometimes, even debts with lower interest rates can cost you more each month if the balance is higher.

You must still pay all your ongoing liabilities, as normal, such as your gas, electricity, council tax, rent, or mortgage.

You must also make sure you pay the minimum amounts towards your other debts each month before you pay everything else to your most expensive debt.

As you pay off each debt, you move onto the next one, until you have none left.
The Money and Balance Transfer Approach is a form of borrowing and involves using credit cards. It, therefore, is only likely to be possible if you do have a good credit score and can apply for credit cards. Alternatively, you may have one that you have not used yet.

A Balance Transfer is when you transfer one credit card balance over to another, to take advantage of an interest free period.

A Money Transfer is similar but involves transferring cash from a Credit Card over to another account, such as an overdraft to pay off the balance owed on it. Again, this is with a view to taking advantage of an interest free period.

The two things you must watch out for is there will normally be a transfer fee which will be a percentage of the money you borrow. You need to make sure that will not be more than you will pay in interest if you do not transfer the money or balance.

You also must make sure, during the interest free period, to reduce your debt and stop using credit cards.
The next approach is a common one, and that is to consolidate your debts, so you only make one payment each month.

This involves taking out a loan to repay your other debts. You then just have one debt to pay each month.

The problem with this approach is you can end up owing more, even if you do not borrow any more than you owe. The reason why is you will have to pay interest on the loan you take out, which means you will repay more than you originally borrowed.

Also, there is a danger, if you keep borrowing, the amount you owe will increase again.

The consolidation Loan approach can help, but it is also the strategy most likely to fail if you do not address the underlying reasons why you were using borrowing in the first place.
The Incremental Approach is like the Snowball Approach, but in reverse. The idea is also to achieve the same outcome as the Consolidation Approach and only have one debt to pay at the end, and then none.

The way the Incremental Approach works is you pay off your smallest debts first, then when those are paid off, you move onto the next one.

This may be more costly than the Snowball Approach, as you will likely be paying more in interest on your larger debts, but you will reduce the actual number of debts you have sooner, which some people find easier for them to manage their monthly payments.

You still must pay all your ongoing liabilities and maintain minimum payments to all your other debts.
As a matter of good practice, whenever you are trying to get your finances in order, it is always a good idea to carry out a credit check for yourself, just to make sure the information Credit Reference Agencies hold on you is correct. If it is not you can ask for it to be changed.

There are three main Credit Reference Agencies operating in the UK. These are:

- Experian.
- Equifax; and
- Transunion

You can also check your credit report for free in the UK, and usually these Statutory Credit Reports will give you all the information you require. There are also several phone apps you can use to obtain your credit report information free, such as those provided by Experian, Clearscore (Equifax) and Credit Karma (Transunion).
In Scotland Formal Debt Recovery Procedures are used by Sheriff Officers and Messenger at Arms (not Bailiffs) and only after the person you owe money to has obtained a Court Order or a Summary Warrant (for Council Tax and HMRC debts).

Sheriff Officers are Officers of the Sheriff Court and Messenger at Arms are Officers of the Court of Session.

They can execute a wide variety of different recovery procedures to help recover a debt and this can include Bank Account Arrestments, Wage or Earning Arrestments and Attachments. These different procedures in Scotland are known as Diligences.

Sheriff Officers can only come into your home if they have permission from the Court to do so, and this is to use a procedure known as an Exceptional Attachment Order.

Only Sheriff Officers, by law, can take property off you in Scotland to pay a debt. Debt Collectors are not allowed to do this unless you voluntarily hand it over to them.
Charge for Payments are legal demands for Payment that are served on you by a Sheriff Officer or Messenger at Arms after someone you owe money to has obtained a Court Order or a Summary Warrant. They need to be served on you before a Wage Arrestment or Attachment is executed.

They also must be served before a Bank Account Arrestment is executed for Summary Warrant debts, like Council Tax or HMRC debts, but not other debts.

If you do not pay a Charge for Payment within 14 days, you become Apparently Insolvent, which mean a Creditor can apply for your Bankruptcy, providing you owe them enough debt. However, to do this they must do so within 4 months of it being served on you.

Charge for Payments last 2 years, then they must be served again if they want to use it to arrest you wage or freeze your bank account.
Earning Arrestment, or Wage Arrestments, are when someone you owe money to instructs a Sheriff Officer to arrest your wages whilst they are in the hands of your employer. This means they are taken off before you receive them.

Wage Arrestments are continuous and are taken off until the debt you owe is paid off in full. A Creditor can only do a Wage Arrestment if they have a Court Order or Summary Warrant and have served on you before a Charge for Payment, which is a 14-day legal demand for payment.

Wage Arrestments do not take all your earnings. How much is taken is calculated using a table, that allows for a certain amount to be protected and then takes a percentage over and above that amount. Wage Arrestments can be stopped by certain formal debt solutions.

How Much Can They Take?

How to Stop a Wage Arrestment
Bank Account Arrestments are one of the most frequently used debt recovery procedures in Scotland. The only procedure that is more common is the serving of a Charge for Payment.

When your Bank Account is arrested the first £529.90 is protected. After that everything is frozen up to the level of debt that it is you owe. Unlike Wage Arrestments, Bank Account Arrestments are not continuous, which means they are a one off. However, they can be executed on more than one occasion.

If you have less than £529.90 in your account or are in an overdraft, they will fail. Your Bank may still charge you a £25 administration Fee.

They can be challenged if they are unduly harsh or the only sums frozen are benefits, although this can take some time. The most effective way to avoid a Bank Arrestment, if you suspect one is about to be executed, is to register a Statutory Moratorium.

If you do not challenge the Arrestment, the funds are transferred to the Creditor after 14 weeks.
Attachments are when your property is attached to pay your debt. They can only be used against property kept outside your home. The most common type of property that is attached is cars.

In recent years, the number of Attachments has declined, largely as a result in the growth of car finance. When a Car is subject to a Hire Purchase, Conditional Sale or PCP Agreement it cannot be Attached as you do not own the property.

When a car is attached it is not removed immediately, but you are given an Arrestment Schedule, to say it has been attached. This prevents you selling it or giving it away. It can also be a criminal offence to intentionally damage it.

Where a car is worth £3,000 or less and you have a reasonable requirement for it, such as to travel to work, or to take your kids to school, you can argue it is exempt from Attachment.

After a car is attached you can arrange with the Sheriff Officers to have it released if you pay off the debt, or they will arrange for it to be uplifted and sold.
Exceptional Attachment Orders are rare in Scotland, but they do still occur. Other than to evict you or repossess you home, this is the only time that a Sheriff Officer can come into your home if they want to recover a debt.

However, many of the items in your home are protected by law, such as essentials like chairs, beds, tables and window and floor coverings. Children’s toys are also protected, as are cookers, fridges and TVs.

Before a Creditor can instruct a Sheriff Officer to execute an Exceptional Attachment Order in your home, they first must attempt other methods of recovery or show to a court that they could not reasonably be expected to succeed.

They must also show the Court that it is likely to raise £100 and their reasonable expenses of carrying out the act.
An Inhibition in Scotland is a charge that is placed over any land or buildings you own. It is not specifically placed over any one property, but all properties you own.

The lender cannot force you to sell the property, but they can prevent you from selling it or re-mortgaging or securing any further debt over it, until you pay the debt you owe them off.

Inhibitions are registered in the Register of Inhibitions and Adjudications and last for five years. After those five years, they lapse, but a lender, if they are still owed money, can re-register the Inhibition.
- Other Types of Wage Arrestments

Earning Arrestments are a specific type of Wage Arrestment that any Creditor can use if they obtain a Court Order or Summary Warrant. However, there are other types of deductions that can be used to recover debts from Earnings. These tend to be bespoke to specific types of debt or when more than one debt is being recovered by an Earning Arrestment and are provided for in legislation.

Example of other types of Wage arrestments are:

- Deduction from Earning Orders
- Conjoined Earnings Arrestment
- Current Maintenance Arrestment
- Direct Earning Attachments

Find out More About Wage Arrestments
5. Debt Solution Options

When we talk about Debt Solutions, these can be broken down into Debt Management and Debt Relief Options; they can also be broken down into Formal and Informal Debt Solutions.

Debt Management Solutions are for when you can repay your debts within a reasonable period, but cannot make minimum payments, so you will have to default on your credit agreements.

Debt Relief Solutions are for people who cannot repay their debts within a reasonable period and, therefore, need some if not all their debts written off.

The difference between Informal and Formal Debt Solutions is with Informal Debt Solutions you need all the creditors to agree. With Formal Debt Solutions, you do not, and the law can be used to force some Creditors to accept the solution.

Debt Management and Debt Relief Solutions can be both Formal and Informal Debt Solutions.
Token Payments are used when someone cannot pay much to their debts, but still wants to acknowledge they have a debt, usually in return for the Creditors agreeing to put things on hold and freeze interest and charges.

Tokens Payments are ideal when someone is experiencing short term financial problems, possibly as they have become unemployed or ill and hope to make increased payments later.

Creditors are, therefore, asked to accept payment of £1 per month or sometimes £5 per month and asked to freeze interest and charges.

Token payments are usually suitable for what is non-priority debts like credit cards and loans, but not for debts such as rent and mortgage arrears or Council Tax debts. These types of debts are priority debts, as the consequences of not paying them can be more severe. They tend to be offered more, whilst non-priority debts are offered Token Payments.

Find out More About Token Payments
Informal Moratoriums are like Token Payments and should not be confused with Statutory Moratoriums, which are a formal debt solution.

They are a temporary solution, like Token Payments and are ideal for someone who has experienced an income shock and needs more time before they can resume making payments to their debts again.

Moratoriums do not involve making any payments to your debts, but Creditors are still asked to freeze interest and charges.

Moratoriums, like Token Payments are usually only suitable for what are non-priority debts, like credit cards and personal loans, but not debts like rent and mortgage arrears or council tax arrears. These Creditors may still be paid, whilst other Creditors are asked to allow a Moratorium.
Debt Management Plans (DMPs) are for people that cannot pay the minimum payments to their debts but want to repay them back in full. They just require more time.

DMPs do this by making offers to creditors that allow you to pay what you can afford, and your disposable income is divided between your creditors on a pro-rata basis. This means if someone has 40% of your debt, they will receive 40% of your disposable income; if someone has 10% of your debts, they will receive 10% of your disposable income.

Debt Management Plans are informal, so this means they require all your Creditors to agree to them. Many Creditors will be happy to enter a DMP with you, especially if it is being offered through an advice agency, as they will have verified your income and expenditure.

However, the problem with DMPs is if all Creditors do not agree to your offer, they may not work. Also, if the Creditors do not freeze all interest and charges, some of your debts may still increase whilst you are in a DMP.

More about DMPS
In certain circumstances, Lenders may be prepared to consider writing off debt in part or in full.

This can happen for several reasons. You may wish to request a Write Off of some of your debt as you are able to make a lump sum payment in full and final settlement of the debt.

Alternatively, you may request your debt is written off in full because of your circumstances and it is not likely you will ever repay it.

Writing off debt is never a decision a lender takes lightly, but they will consider it if the circumstances of your case merit it. These normally need to be quite exceptional.
The Debt Arrangement Scheme

A Debt Payment Programme under the Debt Arrangement Scheme is a voluntary repayment plan, but a formal one, which means it has additional benefits that Debt Management Plans do not have.

On approval a Debt Payment Programme freezes all interest and charges, protects you from your creditors and allows you to repay your debts at an affordable level. It also stops Wage Arrestments.

You only make one payment per month, which a Payment Distributor then uses to pay all your debts for you.

Creditors do get to vote on a Debt Payment Programme, but, if any object, a Scottish Civil Servant decides whether to approve it or not. They can set aside any objection. Providers of Debt Payment Programmes are also not allowed to charge you a private management fee for entering one, so every penny you pay goes to your debts.

Is the DAS suitable for you?
Sequestration is what Bankruptcy is known as in Scotland.
You can apply for Bankruptcy yourself, but first you must obtain advice from a Money Adviser or a Licenced Insolvency Practitioner.

Sequestration is awarded by the Accountant in Bankruptcy, or the Court (where a creditor makes you bankrupt). All your debts and assets then become the responsibility of your Trustee, who may require you to pay a monthly contribution to your Bankruptcy, for up to 48 months.

If you have a Wage Arrestment, this is stopped once your Bankruptcy is awarded.

At the end of your Bankruptcy, your liability for your debts comes to an end, with some exceptions.

Bankruptcy can be a good option where you cannot repay your debts within a reasonable period, but it can affect your assets, so it is important to consider all your options first.
A Minimum Asset Bankruptcy (MAP) is a special type of Bankruptcy for those on low incomes and with little assets and is suitable for people who cannot repay their debts and need them written off.

To apply for a MAP your debts must be at least £1,500 and no more than £25,000.

You also cannot own your home and you must be in receipt of certain social security benefits or unable to pay anything to your Bankruptcy.

If a MAP is awarded, then providing your circumstances do not improve before you are discharged from your bankruptcy, your debts can be written off in six months, although some other restrictions may still apply for another six months.

To apply for a MAP, you must first seek the advice of a Money Adviser.
A Protected Trust Deed, like Sequestration, is a type of personal insolvency. In order to grant one, you must use a Licenced Insolvency Practitioner.

Like Bankruptcy, Protected Trust Deeds allow you to get some of your debts written off, but you will have to pay something towards it for at least 48 months (4 years).

If you have an Earnings Arrestment, then this comes to an end once you enter a Trust Deed and it becomes protected, which is after 5 weeks, providing creditors with more than one third of your debt do not object.

The Accountant in Bankruptcy also must agree to register it.

When you receive your discharge from your Trust Deed, your liability for your debts comes to an end.
Statutory Moratorium are legal devices that you can use to protect yourself from Sheriff Officers and Creditors who want to make you bankrupt. They normally only last six weeks, however, because of the Coronavirus Crisis they have been extended to six months, providing you apply for before the 31st of March 2021.

On their own they do not address your debts problems but provide you with six months protection from creditors so you can consider all your options, including the Debt Arrangement Scheme, Trust Deeds and Sequestration.

It is free to apply for a Statutory Moratorium and normally it will be registered within 24 hours. You can apply for one yourself, but it is advisable to seek advice first.
Time to Pay Directions and Orders do give you time to repay a debt but can only be applied for once a lender has taken you to Court.

However, they can provide you with time to pay a debt, even when a Creditor has a Court Order against you.

You can only apply for one, however, if you have not previously applied for one for the same debt.

Time to Pay Directions and Orders are applied for via the Sheriff Court but cannot be used for debts that are over £25,000 or are owed to HMRC. They also do not stop a Creditor getting a Court Order against you but give you time to pay.

You should never apply for a Time to Pay Direction or Order for Rent Arrears or Hire-Purchase, Conditional Sale or PCP Car Finance agreements. If you are being taken to court for these types of debt, you should seek specialist advice.

Find out more about Time to Pays
Time Orders are different from Time to Pay Directions and Time to Pay Orders. The main difference is where with Time to Pay Directions and Time to Pay Orders you still have a Court Order against you, with a Time Order, you do not, and you are given time to repay your debt.

Also, where a Time Order is used for a Hire Purchase, Conditional Sale or PCP car agreements, you get to keep the car whilst you are paying the debt off.

Often with Time to Pay Directions and Time to Pay Orders, the car must be returned.

Time Orders can only be used for Consumer Credit debts and cannot be used for debts such as rent arrears, council tax or debts owed to HMRC.
It cannot be stressed how important it is, if you are struggling with problem debts in Scotland, that you seek advice.

Across Scotland there is a network of free advice agencies that can provide you with advice.

To find your local advice agency, click the button below or visit [Advice Scotland](https://www.advice.scot).