The Quick UK Guide to Debt Collectors, CCJs, IVAs and Bankruptcy
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Debt Collectors, CCJs, IVAs and Bankruptcy

By
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Warning – This guide is designed to give you an overview of your rights in dealing with debt within the UK. This document should not be taken as legal advice, and the publishers accept no responsibility for those who do so. If you have problems with debt, we urge you to seek professional help and advice. The author, publisher and Andrews UK can accept no responsibility for any loss financial or otherwise as a result of following the advice in this guide.

Debt Collectors

Key Fact: Any attempt by a person or company to collect debts has to be reasonable. If you are being chased for money before any court action has taken place, the following information should prove useful:

The company or person chasing debt from you must follow the following points:

- They must never communicate in whatever form (whether letter, telephone call or other) with you in an unclear, inaccurate or misleading manner.
- They must never send you a letter that look like a court claim - but is not officially from the court.
- You must be able to understand who the company is and what they do; they have to be clear about who and what they are.
- You must be able to understand the language they use. They are not allowed to use complicated legal language, and are not allowed to confuse you.
- The company or person must produce a balance, statement or information about the debt when asked, and you have to be able to understand the amount of money you owe and why.
- They must NOT contact you at unreasonable times. Reasonable times are generally accepted as between 8am...
and 6pm Monday to Friday. They should not call you at the weekend unless you give them permission to do so.

- They must NOT ask you to phone them on premium rate numbers. When you phone the company or person to talk about the debt, the recording must tell you if the call will be charged at a different rate.

- They must not lie about their authority and powers to collect the debt - for example they cannot pretend to be a solicitor or bailiff if they are not officially registered as one.
- They cannot tell you that they can take your property - only a court may decide this.
- They must not use any documentation suggesting that they are a member of government when they are not.
- They must not tell you that court action has been used against you when it has not.
- They are not allowed to tell you or imply that your debt is a criminal offence - only a court can decide this.
- They may not tell you that they will take court action against you in Scotland when you live in England or vice versa.
- They cannot put any pressure whatsoever on anyone who is not directly linked with the debt.
- They cannot discuss the debt with anyone else but you.
- They cannot advise you to sell your property or take out a loan to pay off the debt.
- They cannot pass your debt to another company without advising you first.
- They must not ignore the reasons / arguments you make as to why you are not paying the debt - they are required to stop any action until the dispute is resolved.
- They cannot make you enter a payment plan which you cannot afford.
- They have to accept reasonable offers made to settle the debt - for example if the debt is £100 and you offer £10 a month.
- They cannot send debt letters to anyone but you, even family members (unless they are a joint party from the original debt).
- They cannot add additional collection amounts to the original credit agreement, and make you think that you have to pay these costs.
- They cannot visit you at work unless it is a commercial debt and the courts allow it.
- They cannot visit you in hospital.
- They must not visit you if you are unwell or vulnerable.
- If a debt collector visits you at home you can tell them to stay or go when you want. We suggest you always have another person with you for support. Please note that rules for Bailiffs (rather than debt collectors) are very different - please see our Quick UK to Bailiffs.

If the company person does any of the above report them to the Office of Fair Trading:

Office of Fair Trading
Fleetbank House
2 – 6 Salisbury Square
London
EC4Y 8JX
Tel No: 08457 224 499
www.oft.gov.uk

How To Deal With Harassment By Your Creditors

First Steps

- Tell them you are aware of your rights under Section 40 of the Administration of Justice Act & the OFT Debt Collection Guidance.
- Ask them to regulate their behaviour and stop the harassment before you report them.
- Advise them of a good time to call you to discuss the debt further when you have had time to think about fair repayments.
The Criminal Justice Act & Public Order Act 1994 Section 4a makes it a criminal offence to cause “Harassment, alarm or distress” by using “threatening, abusive or insulting words or behaviour”. This is an offence if it happens in a public place (not in your own home). You should contact the police if this happens to you.

The Protection from Harassment Act 1997 makes it a criminal offence to harass you, or put “people in fear of violence”. The harassment must happen on at least 2 separate occasions. The police would have to agree to prosecute for this offence.

If you are harassed by a debt collector, contact your local Police Station and make a complaint against the company or person who has committed the offence.

Other Options for Dealing with Harassment

Prosecute the company or person in court - you could refer to the Malicious Communications Act 1988. This deals with the sending of letters or articles for the purpose of causing “distress or anxiety”. A person found guilty can be fined in the Magistrates Court. To prosecute successfully, the letter or article sent would have to convey:

- A message which is indecent or grossly offensive
- A threat; or
- Information which is false and known or believed to be false by the sender.

You can also use BT’s “Choose to Refuse” option which will block their calls - phone BT or your phone provider to ask for their options to block calls.

County Court Judgements (CCJs)

The CCJ Claims process is generally straightforward, and you won’t usually need a solicitor. If a claim is successful against you it stays on record for 6 years. If you owe money to a company or person, they have the right to submit a claim to recover their money through the county court. The person claiming will use a N1 CPC form, and you will receive a N9 form.

Claim Forms

**N1 CPC claim form** - Shows you how much a creditor says you owe them.

**N9 Acknowledgement of service** - Used to ask for another 14 days to file a defence

**N9A Admission form** - If you admit the claim but you want time to pay the form asks for your income and expenditure so the court can determine how much you should pay if it finds against you. You can use it to make an offer to pay, or to ask for more time.

**N9B Defence form** - If you wish to defend the claim

**N 244 Stay of judgment** - You can use this to stop the judgment being enforced – if you want it set aside or you can’t afford to pay anything because your circumstances have changed. Firstly you will need to have a valid reason to have the judgement set aside, You will then fill in a form called N244 which you can get free of charge from the county court, giving the reason you think that the CCJ should be removed from your records. After you send this form to the court, your application will be considered. If you’re successful, you can then write to the credit reference agencies giving a copy of the court’s set-aside judgement, and they will then remove the CCJ from your records.
There are many reasons you can give which may be successful in overturning the CCJ as detailed above, but it’s best to keep your argument as clear and concise as possible for the best chances of success. Possible reasons include the following:

- If you settled your debt ‘out of court’ then the action should have halted and no judgement issued. Sometimes this doesn’t happen though, and again a judgement is passed by default.
- If you cleared the debt within 28 days of receiving the judgement, then it should have been cancelled and should not have appeared on your record.
- If you didn’t receive the summons for any reason, you may have been unaware of the whole court procedure, and would have received a judgement by default. As you didn’t have the chance to defend yourself, you can appeal against it after the fact.
- If you were not told about the judgement being made, for any reason, then you can appeal.

There are many more reasons you could use, but the main thing to concentrate on is either that the debt was settled or that you were unaware of the county court hearing or decision, and so couldn’t defend yourself or appeal.

**N245 Application for suspension of a warrant and/or variation of an order** - If you can’t afford to pay all that you’ve been ordered to pay (whether in full or installments), this is used to ask the court to agree to a lower amount.

**EX160 Application for a fee remission** - Asks the court not to charge you a fee (you can apply retrospectively for six months).

Depending on how your reply to the court they will contact you with the agreement or court date.

**Individual Voluntary Agreements (IVA)**

What is an IVA?

An Individual Voluntary Arrangement (IVA) is a formal agreement between someone who owes money (the debtor) and the people he or she owes money to (creditors).

An IVA proposal sets out how the debtor is going to repay the creditors, usually over a period of five years. In order for an IVA to be feasible, there are some minimum requirements that must be met. These requirements are:

- You must have at least £15,000 of unsecured debt
- You must have at least £200 a month available for payment into the IVA
- You must have three or more debts to different institutions.
- You should have a regular income

Due to its formal nature, an IVA has to be set up by a licensed insolvency practitioner.

If you propose an IVA, 75% of your creditors must agree for it to be approved.

An Individual Voluntary Arrangement can give you a level of protection against impatient creditors.

A bankruptcy order can be cancelled if a voluntary arrangement has been approved

Individual voluntary arrangements remain on the public register for two years after the date of either completion or termination of the arrangement.

*However, If the individual voluntary arrangement fails then the creditors can apply for the bankruptcy of the individual.*

**Bankruptcy**

A Court makes a bankruptcy order only after a bankruptcy petition has been presented. It is usually presented by:

- Yourself (Debtor's Petition); or
- Creditors who are owed at least £750 by you (Creditors' Petition)
A bankruptcy order can still be made even if you refuse to acknowledge or agree to the order. You should therefore try to co-operate fully once the bankruptcy proceedings have begun. If you dispute the creditors’ claims you should try and reach a settlement with them before the bankruptcy order is made: trying to do so afterwards is difficult and expensive.

How much will it cost to make myself bankrupt?

There are three fees you may have to pay:

**The Court fee of £120** - In some circumstances the Court may waive this fee; for example, if you are on Income Support. If you are not sure whether you qualify for a reduction in the fee, or if you are exempt from paying the fee, Court staff will be able to advise you.

**The deposit of £250 towards the costs of administering your bankruptcy** - This deposit is payable in all cases.

**The fee to swear the statement of affairs** - In a County Court, no charge is made to swear the affidavit, which is part of your statement of affairs. But in the High Court or before a solicitor there is a £7 charge. If you were in business as a partnership, each partner will have to pay separate fees. If you are a married couple and you are both applying for bankruptcy, you will each have to pay separate fees. If you were in business as a partnership, each partner will have to pay separate fees, unless all the parties apply for a joint bankruptcy petition under the Insolvent Partnerships Order 1994 (Form 16).

Bankruptcy petitions and orders

Bankruptcy petitions are usually presented either at the High Court in London or a County Court near to where you live or trade.

A petition can be presented against you even if you are not present in England or Wales at that time, providing you normally live in, or have a recent residential or business connection with, England or Wales.

If you want to make yourself bankrupt you should contact your local Court. They can give you the name, address and telephone number of the nearest County Court that deals with bankruptcy.

The address and telephone number of your local County Court is listed under ‘Courts’ in the phone book, where you should look for ‘Civil Courts - County Courts’ and not ‘Magistrates’ Courts’. You will need to contact the Court to find out if it has jurisdiction to hear a bankruptcy case.

What will happen at Court?

The Court will either hear your petition straight away or arrange a time for the Court to consider it.

If English is not your first language and you need an interpreter, the Court will not be able to help you find one. You will have to do this yourself and pay interpreter’s fees.

At the hearing the Court can do one of four things:

- Stay (delay) the proceedings - often because the Court needs further information before it can decide whether to make a bankruptcy order.
- Dismiss the petition - perhaps because an administration order would be more appropriate.
- Appoint an Insolvency Practitioner - if the Court thinks that an Individual Voluntary Arrangement would be more appropriate. This will only be possible if your assets are more than £2,000, your unsecured debts are less than £20,000 and you have not been bankrupt or made an Individual Voluntary Arrangement in the previous five years. If you do not wish to enter into such an arrangement, you should inform the Court.
- Make a bankruptcy order - you will be bankrupt the moment the order is made by the Court.

As well as a bankruptcy order, the Court may issue a certificate of summary administration - as long as your unsecured debts are less than £20,000 and in the previous five years you have not been bankrupt or made an Individual Voluntary Arrangement with your creditors. If the Court issues this certificate, it will make the administration of your bankruptcy quicker and simpler.
The Official Receiver will then be your Trustee in bankruptcy (see below) and you will automatically be freed from bankruptcy (known as ‘discharged’) two years from the date of the bankruptcy order. (If a certificate of summary administration is not made, your discharge from bankruptcy would usually be three years from the date of the bankruptcy order.)

Who deals with bankruptcy cases?

The Official Receiver is a civil servant and an officer of the Court. He is responsible for administering bankruptcies and will act as a Trustee of your estate unless a private sector Insolvency Practitioner is appointed.

One of the Official Receiver’s main duties is to investigate your financial affairs for the time before and during your bankruptcy.

An Insolvency Practitioner can be appointed Trustee instead of the Official Receiver, they must be licensed and are usually accountants or solicitors. The Insolvency Practitioner is then responsible for the disposing of your assets and making payments to your creditors.

What are the duties of a bankrupt?

- When a bankruptcy order has been made, you must provide the Official Receiver with information relating to your financial affairs such as a list of your assets (property, pensions, insurance policies etc), amounts of each debt and to which creditor they are owed to, within 21 days.
- Any assets are then to be handed over to the Official Receiver along with any bank statements and insurance policies relating to your property and financial affairs.
- Any assets and income increases obtained during the bankruptcy should be declared to the Trustee.
- You must not obtain credit of £250 or more from any person without first disclosing the fact that you are bankrupt.
- Any bank or building society accounts must no longer be used.
- You must not make any direct payments to your creditors.
- You may also have to attend Court to explain why you are in debt. If you do not co-operate, you could be arrested.

What are the effects of Bankruptcy?

Once you have been made bankrupt all assets belonging to you come under the control of the Trustee, including your home.

Where the home is co-owned, the debtor’s interest can still be realised, but a right of occupation period of twelve months is allowed for the disposal of the property if a co-owner, family or dependents of the debtor occupy it. At the end of the twelve-month period, the property will almost certainly have to be put up for sale, enforced by a Court order if necessary.

The other main disadvantages of bankruptcy are the constraints forced upon the bankrupt and the stigma of having to declare oneself as a bankrupt for certain transactions.

A bankrupt may not:

- Obtain credit of £250 or more alone or jointly with another person without disclosing his or her bankruptcy
- Conduct business directly or indirectly in any name other than that in which he or she was made bankrupt
- Be involved directly or indirectly in promoting, forming or managing a company without the Court’s permission
- Hold certain public offices
A bankrupt may open a new bank or building society account but should disclose the fact that they are bankrupt. The bank or building society may then impose conditions and limitations. Overdraft facilities or cheque books must not be obtained, as they are likely to be dishonored.

The bankrupt must inform the Trustee of any funds available in the account which exceed the normal living expenses, in order for the Trustee to distribute among the creditors.

When a bankrupt is discharged these constraints are ended.

How does bankruptcy affect your credit rating?

Your bankruptcy will be registered with credit reference agencies and remain on your file for a minimum of six years. After this time you may still have to declare your previous history, particularly when applying for a mortgage.

How long does Bankruptcy last?

A bankrupt may be discharged (freed from obligations under the bankruptcy order) after the one year.

Discharge is not necessarily automatic and can be postponed by the Court. In addition, the discharge may not necessarily free that person from all liabilities and does not mean that unrealised assets will be safeguarded.

Discharge releases the bankrupt from most of the debts owed at the date of the bankruptcy order. Exceptions include debts arising from fraud, certain crimes and fines. Certain other debts such as damages or personal injury or money owed under family proceedings (such as maintenance) will be released only if the Court agrees.

If you have been declared bankrupt before, within the last 15 years, you will not be automatically discharged. You will only be able to apply to the Court for a discharge 5 years after the date of your current bankruptcy order; even then the Court may refuse or delay discharge.

What are the main changes of the new legislation (Enterprise Act 2002)?

The main changes are as follows:-

- In certain circumstances you may be discharged from bankruptcy after one year (previously the minimum was two years)
- A limit of three years may be placed on the Trustee’s rights to realise equity in your home. (previously this was open ended)
- Harsher penalties may be imposed on those who are considered to have brought about their bankruptcy through reckless or irresponsible behaviour. Restrictions after bankruptcy could last for a further two to fifteen years.

Living Abroad

**Question** - I have been living abroad but have large debts in the UK. How will this affect my credit rating in the UK and should I file for Bankruptcy?

**Answer** - Any debts that you have in the UK will remain on your credit reference file for six years after the last activity on the account (this could be a repayment). Bankruptcy orders will also be on your file for six years or even longer. Once discharged from bankruptcy you should not have a problem obtaining credit after the six-year period although you may be restricted in the number of mortgage lenders who will consider you. If any transaction have taken place from your current address it is possible that your creditors may try to trace you there.

Should you wish to apply for bankruptcy in the UK then you will have to do this in person at an English or Welsh County Court. This is only possible for the first three years’ in which you reside abroad.

**Summary**

We hope this guide has been useful to you. Please remember that there are many people who will help you if you
have financial problems, from the CAB (Citizen’s Advice Bureau) to the CCCS (Consumer Credit Counselling Service). We highly recommend you talk to one of these organisations if you are concerned about managing your debts.

**Useful Addresses**

Complaint Handling and Enquiries Team  
Zone C, 1st Floor,  
102 Petty France,  
London,  
SW1H 9AJ  
Telephone: 0845 4568770  
Fax number: 020 3334 4087  
Disability Helpline: 0800 358 3506  
e-mail: customerservicecshq@hmcourts-service.gsi.gov.uk

The Finance & Leasing Association (FLA)  
2nd Floor, Imperial House  
15-19 Kingsway  
London WC2B 6UN  
Tel No: 020 7836 6511  
[www.fla.org.uk](http://www.fla.org.uk)

The Consumer Credit Trade Association (CCTA)  
Suite 8, The Wool Exchange  
10 Hustlergate  
Bradford  
BD1 1RE  
Tel: 01274 390 380  
[www.ccta.co.uk](http://www.ccta.co.uk)

Credit Services Association Ltd (CSA)  
(For Debt Collection Agencies)  
Wingrove House  
2nd Floor East  
Ponteland Road  
Newcastle upon Tyne  
NE5 3DP  
Tel: 0191 286 5656  
[www.csa-uk.com](http://www.csa-uk.com)

Consumer Credit Association (CCAUK)  
Queens House  
Queens Road  
Chester CH1 3BQ  
Tel No: 01244 312 044  
[www.ccauk.org](http://www.ccauk.org)

Mail Order Traders’ Association (MOTA)  
7 Floor  
100 Old Hall Street  
Liverpool  
L3 9TD  
Tel: 0151 227 9456  
(No website)  
Office of Fair Trading  
Fleetbank House  
2 – 6 Salisbury Square  
London  
EC4Y 8JX  
Tel No: 08457 224 499  
[www.of.t.gov.uk](http://www.of.t.gov.uk)
If your complaint is against a solicitors firm acting for a creditor, a complaint can be made to:
Consumer Complaints Service
The Law Society
Victoria Court
8 Dormer Place
Leamington Spa CV32 5AE
Tel No: 0845 608 6565
www.lawsociety.org.uk
Also Available

The Quick UK Guide to Bailiffs
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