

Chapter 1

Debt advice: an outline

This chapter covers:

1. The adviser as a professional (below)
2. The debt advice system (p4)
3. Administrative systems (p9)

1. The adviser as a professional

Debt advice is a professional activity. There is a package of attitudes, skills and strategies that are necessarily part of any debt advice service. This guarantees consistency and quality assurance. Users of such services are misled if anything less than this package is offered.

Debt advice can be provided by specialists or by professionals whose job primarily involves other activities – eg, housing officers and social workers. It can be provided by paid or voluntary workers. Recent years have seen the growth of debt management companies that charge clients a fee for setting up and handling debt repayment programmes.

There is currently no qualification that recognises the profession of money advice or acknowledges the wide range of skills and knowledge which money advisers bring to the job. However, the draft National Occupational Standards for Legal Advice Qualifications and Assessment Framework (currently under consultation) recommends a Level 3 NVQ (aimed at generalist advisers) and a Level 4 NVQ (aimed at specialist advisers), including two knowledge units covering first-line and casework money and debt legal advice, LA41 and LA42 respectively. Further information can be obtained from Skills for Justice at info@skillsforjustice.com. Several awarding bodies have expressed an interest in developing related qualifications, which means it is possible that a generalist NVQ Level 3 and a specialist NVQ Level 4 in debt and money advice will be available some time after October 2008.

A professional debt adviser needs a mixture of skills, knowledge and attitudes, which together form the basis of good practice. The Institute of Money Advisers (the professional association for full-time, part-time or volunteer debt advisers in England, Wales and Northern Ireland who deliver or promote free, confidential,

impartial and independent debt advice services) is currently working on a code to outline the main aspects of good practice.

In December 2001 the Office of Fair Trading (OFT) issued guidance on the minimum standards of service that debt management companies should provide, but made it clear that its principles applied equally to the free advice sector. The OFT subsequently issued a commentary to clarify the extent to which the guidance applies to the free sector.¹ It largely underlines what should be good practice and will be referred to where relevant below.

The Money Advice Trust is currently leading on a Money Advice Quality Model project with input from various advice sector bodies. This aims to develop a quality assurance scheme for money advice providers to complement the individual accreditation of money advisers.

An unambiguous role

In any situation where money is owed, there are two parties whose interests may conflict. Both parties will have a variety of legal remedies and defences, and well-established professionals know that they cannot advise both parties in such a situation. A debt adviser similarly needs to be clear that s/he is working only for the interests of the client. This is true even if the adviser's employment is funded by the finance industry or other creditors, such as a local authority, or if s/he works for an organisation that seeks to be impartial.

While impartiality may at different times require a worker to offer to assist both creditors and clients, it cannot mean that a debt adviser is working towards the best interests of both parties at the same time when there is an inherent conflict of interests.

The OFT guidance and commentary make clear that all advice must be in the best interests of the client and should take account of:

- the nature of the debt;
- the client's financial position;
- the powers of the creditor;
- whether interest or other charges have been frozen.²

A professional attitude

A debt adviser should be aware of experiences in her/his own past which may give her/him judgemental attitudes towards clients and/or creditors. Debt advisers must consciously rid themselves of any personal bias and adopt a professional approach to the work.

A professional adviser must also offer a high-quality, accessible service to all groups in society and should work towards understanding that debt can affect clients from different social groups in different ways.

A commitment to social policy

A professional debt adviser should not allow the same problem to affect adversely the lives of countless users, but will make known the lessons which can be learnt from her/his work to as wide an audience of policy makers as possible.

Sound knowledge of law and procedures

A professional debt adviser should be knowledgeable and imaginative about the ways in which the law can be applied to mitigate the effects of debt. S/he should be able to offer and explain each of these to any user.

A commitment to developing the service

A professional debt adviser should take regular opportunities to enhance her/his own skills through training, research and education, and should participate in offering this to others so that the practice of debt advice continues to be refined and developed.

A systematic approach

A professional debt adviser should apply a single systematic approach to each individual client. This does not, however, detract from the adviser's duty to ensure that any advice given is:

- in the best interests of that particular client;
- appropriate to her/his specific situation;
- realistic; *and*
- where an offer of payment is made, sustainable.

The ability to involve the client in informed choices

A professional adviser should always try to involve the client, ensuring that the client understands the implications of her/his situation and the steps the adviser proposes be taken. The adviser assists the client to make informed choices by giving her/him all her/his options and explaining their consequences before anything is done. The adviser should also manage the client's expectations of the adviser and agency.

Many advisers tend to put pressure on themselves to solve their clients' problems and client expectations can add to this. Whilst advisers should always do the best they can for their clients, there will be times when the options are limited because matters have simply gone too far and the adviser cannot make the problem go away. Advisers should not feel that they have somehow 'failed' the client as they are likely to need supporting through the situation.

Also, many debt cases involve very distressing facts and advisers need to feel that they can share and discuss these sorts of issues with colleagues and supervisors/managers.

2. The debt advice system

The debt advice system is a structured set of procedures and activities that must be worked through if a debt adviser is to provide the best possible service to someone with a multiple debt problem. It is designed to:

- maintain the client's home, liberty and essential services;
- advise the client about her/his rights and responsibilities;
- give the client the information s/he needs to make informed choices in dealing with the debt situation;
- empower the client, where possible.

A systematic approach is essential because of:

- the large amount of information and paperwork generated by most debt enquiries;
- the need to avoid overlooking a particular strategy;
- the need to keep detailed records of the agency's work – both to ensure effective advice and to enable case material to be used for evaluating the service and for social policy development;
- the need to train new workers in a clearly defined set of skills and knowledge;
- the need to guarantee consistency in spite of the diversity of clients using the service;
- the need to protect the adviser from the strain of having continually to 're-invent the wheel'.

A system should not be seen as a straitjacket, and it does not prevent the need for individuals to operate in a creative and flexible way in the best interests of the individual client. Different agencies will need to develop their own paperwork based on demand and resources, and any reporting requirements of funders – eg, the Legal Services Commission.

A debt adviser needs to perform a wide range of tasks in order to provide effective help to clients. This section provides a list of these tasks, in the order in which they should be performed.

- Explore the debt problem. This involves establishing the extent of the client's debts, and the reason(s) for the client's financial difficulties and whether these are temporary or long term. This includes finding out who the client's creditors are, how much is owed to each one and the action each creditor has taken to collect its debt (which may have involved passing the debt to a firm of debt collectors or even selling the debt to a debt purchaser, in which case it is necessary to see what action the collector/purchaser has taken³). In this *Handbook*, the word 'creditor' includes not only the original creditor but also, if the debt has been sold, the debt purchaser (unless stated otherwise).
- Emergencies, such as bailiffs' warrants, threats of disconnection of fuel supply or loss of the home are dealt with first. Where court action is involved, the

adviser can help the client to complete court forms and may represent clients at any hearings.

- The adviser must then check that clients are liable for each of their debts.
- All possible ways of increasing clients' income should then be explored, particularly by checking they are receiving all benefits to which they are entitled. There may also be some clients who are receiving benefits to which they are not entitled. The implications of this need to be discussed in full with the client, along with the effect this may have on their financial statement.
- A financial statement should then be drawn up, showing what income clients are receiving, their essential expenditure and whether there is any income available to make payments to their creditors. There may be instances in which a client's expenditure needs to be challenged. Should this be the case, the adviser must discuss the reasons for this.
- All possible options for resolving the debt problem should then be explored, discussed with clients, and a strategy (or strategies) agreed with them.
- The adviser should then negotiate with priority creditors – ie, creditors whose sanctions for non-payment include imprisonment, disconnection of essential services or loss of the home.
- The adviser should then negotiate with the remaining creditors (known as non-priority creditors) with a view to persuading them to accept the agreed strategy.
- Sometimes, the adviser may have to challenge creditors on whether they are entitled to recover what they are claiming from clients – eg, if clients are not liable for their debts.

Chapters 2 and 3 explain in more detail how to carry out these tasks. Chapters 7 and 8 discuss the strategies for dealing with priority and non-priority debts.

Information to clients

It is not necessary for an agency to have any written agreement with the client, but the adviser should provide the following information to the client at the outset, either verbally or, preferably, in writing.

- Adequate information about the service in plain language – ie, how the debt advice process operates.
- Warnings:
 - that creditors need not accept offers or stop interest or other charges;
 - that creditors may still continue to try to collect their debt and such action could incur additional costs, which will be added to the debt;
 - that the client's credit rating could be adversely affected;
 - about the importance of meeting priority commitments;
 - that correspondence from creditors should not be ignored;
 - about the implication of court action;

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- about the possible consequences of missing pre-arranged appointments with their adviser.

If the agency uses a form of written agreement, it should:

- be clear and written in plain, intelligible language;
- set out the nature of the service to be provided by the agency, together with the amount to be repaid or an estimate (ie, the total amount the client is to pay under the strategy chosen to deal with her/his debts, although it may not be possible to provide this information to the client until later in the process, if at all);
- make clear that:
 - clients are not prohibited from corresponding or communicating with creditors;
 - the agency will deal appropriately and promptly with any correspondence it receives;
 - the agency will keep the client informed of the progress of her/his case, including sending the client copies of correspondence sent to, and received from, creditors.⁴

It is good practice for the adviser at the first interview to point out also:

- the agency's commitment to confidentiality;
- the steps the agency will take and the steps the client has agreed to, or is expected to, take her/himself;
- that the client should not incur any further credit commitments without prior discussion with the adviser;
- that the client should inform the agency of any change in her/his financial circumstances;
- that a successful outcome cannot be guaranteed.

Monitoring creditor practices

The effectiveness of pressure for change often depends on the ability of an agency to produce evidence in support of its recommendations. For this reason, case recording must not just be accurate and detailed, but must also be stored in a form which allows details of particular practices, and the hardship they cause, to be retrieved and patterns detected. In July 2003 the Office of Fair Trading (OFT) issued guidance to the credit industry on what it regards as unfair debt collection practices (see Chapter 2). Debt advisers should, therefore, keep a record of the collection techniques and tactics favoured by individual creditors. This will be useful in the future choice of strategy. In addition, they should note practices or situations that continually cause hardship to clients and should monitor which creditors are responsible for such situations, for use in their social policy work.

There are frequent changes in the law and procedures that affect debt, and agencies are often in a very good position to look closely at how these are working

in practice. Agencies often carry out such exercises as part of a network of local and national debt services.

Credit reference agencies

There is no right to credit and most lenders decide credit applications on the basis of 'credit scoring' – ie, a system used to assess the probability of applicants meeting their financial commitments using information supplied on the credit application form, the lender's own records (where available) and data from credit reference agencies. Different lenders use different systems which should not only establish the likelihood of the applicant repaying but also whether s/he can afford to do so.

Credit reference agencies provide factual information about clients and their credit records. They do not:

- make the decision or express any opinion on whether clients should be granted credit and are unable to tell clients why they have been refused credit; *or*
- keep 'blacklists' or details of clients' credit scores.

Credit reference agencies usually keep details of:

- electoral roll entries;
- county court judgments (these are held for six years unless paid within one month, when any record is removed);
- bankruptcy orders, administration orders and individual voluntary arrangements (these are held for six years);
- credit accounts (a record is held until the account is paid off and then for a further six years);
- whether the client has defaulted on the credit agreement (a record is held for six years from the date the default was registered);
- mortgage repossessions, including voluntary repossessions (these are held for six years);
- aliases, associations and linked addresses – ie, any other names the client has been known by, previous addresses or correspondence addresses and whether the client shares financial responsibility for an account with another person;
- a warning from the Fraud Prevention Service (known as CIFAS). This is a fraud avoidance system developed to protect people whose names, addresses or other details have been used fraudulently by other people in order to apply for or obtain credit. It does not mean that the client is being accused of fraud, but any credit applications may be checked out to ensure s/he is in fact the applicant;
- information from the Gone Away Information Network – ie, on clients who have 'gone away' without informing their lenders of a forwarding address;
- previous credit searches by lenders in the past two years. Several searches within a short period of time may indicate attempted fraud or overcommitment.

Previously, a client's credit file could contain information about other people with the same or a similar surname who live or lived at the same address at the same time as the client concerned (known as 'third-party data'). From October 2004, a client's credit file should only hold information about her/him and any other person with whom s/he has a 'financial association' – ie, joint account holders or applicants, or people who inform the agency they have financial ties. Associations allow lenders to take account of information about anyone 'linked' to the client. Although the client can 'opt out' – ie, ask a lender only to take account of information about her/him, this does not prevent the lender carrying out checks to make sure that the opt-out is not merely intended to hide a partner's poor credit rating. If there is no financial association, the client should inform the agency so the link can be removed.

Guidelines from the Information Commissioner state that an account should not be recorded as in default unless the relationship between the creditor and the client has 'broken down' – ie, the client has been in arrears for at least three consecutive months on the contractual instalments or under an agreement to reschedule repayments, but should be recorded as in default if such payments have not been made in full for six months. Accounts which are subject to repayment arrangements or debt management plans should only be recorded as 'defaults' if the client:

- is only making token payments (see below); *or*
- defaults on the arrangement and the arrears are equivalent to three months' payments under the original contract; *or*
- is making reduced payments, but no agreed arrangement is in place.

A client who is making token or reduced payments can file a 'notice of correction' to record this fact.

A client who has been refused credit should be informed whether or not the lender used a credit reference agency and details of the agency should be provided on request.⁵ A client has the right to obtain a copy of her/his file at any time by sending details of her/his full name and address (including any previous addresses in the past six years), together with a fee of £2 to the credit reference agency concerned.⁶ If the client considers that any of the information on the file is wrong and that s/he is likely to be prejudiced as a result, the credit reference agency can be asked to correct or remove the information.⁷ The client should write to the credit reference agency stating why the information is wrong and submitting any supporting evidence – eg, that a debt has been paid. The agency must respond in writing within 28 days stating either that it has corrected or removed the information, or done nothing. In the meantime, the information is marked 'account query' while the agency checks its accuracy. If the agency fails to remove the information or the client does not agree with the proposed correction, s/he can ask the agency to add her/his own 'notice of correction' to the file – eg, an explanation of how the debt arose. This must be no more than 200 words long

and must be sent to the agency within a further 28 days. The agency must inform the client within 28 days if it accepts the notice. If it does not, the agency must refer the case to the Information Commissioner for a ruling.

A client can complain to the Information Commissioner if s/he believes inaccurate information is being held, but a 'notice of correction' is not appropriate – eg, it needs to be completely removed. If the information about the client's credit history is factually correct, however, it will not be removed just because s/he does not want it made public. Credit repair companies who claim to be able to 'clean up' people's credit reference files (in return for a fee) should be avoided, as the information they give may be misleading or worse.⁸

The Information Commissioner can be contacted at Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF, www.ico.gov.uk. The Information Commissioner's Office produces a useful leaflet, *No Credit?*, available free of charge or online.

3. Administrative systems

Good systems and time management are essential, particularly if the adviser is working under a Legal Services Commission contract.

Appropriate referrals

It is important to establish whether a case should be referred to a specialist or more experienced adviser, and if there is a mechanism in place for referring cases, if appropriate, to other organisations.

Key dates – eg, court hearings, should be recorded so they are not missed and adequate preparation can be made. It may be appropriate to keep a record of referrals to track the outcome.

Once a case is opened, a record should be made of the case, and the client's name and address, to ensure the file can be accessed in the future should the client return after the case is closed.

Files and cases

All documents relating to a case must be kept in an adequate file. All the papers should be kept in date order. Incoming letters could be stored on one side of the file and outgoing on the other. Also there could be dividers to separate each different creditor, so it is easy to access each debt and monitor its progress. Alternatively, papers relating to each creditor could be kept together with a separate sheet on the file to indicate the action on each debt.

Correspondence

The client should be kept informed of each stage of the case and given copies of correspondence from the creditor. Telephone conversations should be recorded on the file and names kept of the person spoken to and date. It is good practice to follow up the call with a letter from either the adviser or creditor, as appropriate, to confirm information discussed if it is relevant to the case. A financial statement should be prepared to give a clearer picture of the client's circumstances and whether s/he is in a position to present offers and at what rate (see p42).

Reviews

Each case should be regularly reviewed to check that replies have been received, where appropriate, that preparation for any court hearings has been carried out, and what the next step in the case should be. The use of a brought-forward diary system may be useful to ensure that important dates are noted and follow-ups are done regularly. There is no point keeping a file open if there is no further work to be carried out, or if the client has ceased contact and the adviser is carrying out work for the client without any confirmation that s/he is maintaining payments as agreed.

By managing the caseload, advisers will also have a clearer idea of how many additional cases, if any, they can take on.

Cases should also be reviewed, if possible, by other workers to check that the advice given is appropriate and correct.

Closure

At the outset, the adviser should give the client an indication of how long the case will remain open. This gives the adviser an idea of how many cases s/he is dealing with and when s/he will be able to take on additional ones. As the adviser is trying to empower the client, the aim should be that, once the work is done on the case, clients can continue with the work themselves, but possibly with the option of returning in the future should they feel unable to deal with matters themselves or if there is a change of circumstance.

If clients return for help when creditors are asking for a review of the finances it may be advisable to assist them with a new financial statement and then advise how to prepare an offer letter, with the intention that they act for themselves.

Client contact

As much information as possible on all the debts should be gained at the first interview and this should be recorded in a clear and concise manner. A *pro forma* could be used to record the information, which could also remind the adviser what to ask the client in order to establish the full facts of the case. Debt clients are known to reveal only debts that they are worried about. It is therefore

important that the adviser goes through all the priority commitments, whether or not they are in arrears, and then moves on to the non-priority commitments. Advice could be given in each area on the consequences should s/he default. The adviser should be realistic about the outcome and be honest with the client at all times.

The adviser should check that agreements have been drawn up correctly and consider any applicable time limits.

It is a good idea to have standard letters held electronically to cut and paste the relevant facts of each individual case. The first letter after the interview should confirm all the advice given, setting out the creditors' powers and the client's options and consequences. The agreed action and the expected time scale should also be outlined.

The adviser should keep clients informed and involved at each stage, with the intention they will be able to deal with the case themselves once the case is closed. The client should also keep the adviser informed of any change in circumstances throughout the life of the case.

Once all the work is completed on the case the adviser should send out a closure letter, detailing the work carried out and the outcome, and giving general advice on how to deal with the various creditors in the future.

Notes

1. The adviser as a professional

- 1 DMG; *Note: application of debt management guidance to CABx and other independent advice agencies*, OFT, April 2002
- 2 For a discussion of this issue, see 'Quarterly Quarrel', *Quarterly Account* 4, IMA, Spring 2007

2. The debt advice system

- 3 The sale of a debt is known in law as an 'assignment' of the debt and the purchaser is known as an 'assignee'
- 4 paras 6-10 and 20-21 DMG
- 5 The lender must supply the details if the request is made in writing: s157 CCA 1974
- 6 s158 CCA 1974
- 7 s159 CCA 1974
- 8 *Credit Repair Promises Fall Short*, OFT, May 2000