

WHAT ARE MY OPTIONS?

An outline of your available debt options

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ABSTRACT

This booklet is intended to provide you with a summary of the various options through which you may be able to deal with your debts. The booklet should be read having regard to the options that we have already discussed.

Each of the seven options are explained in further detail along with their pros and cons. The options have colour coded headings to help you identify between them (see colour key below).

COLOUR KEY

-  **BANKRUPTCY**
-  **INDIVIDUAL VOLUNTARY ARRANGEMENT (IVA)**
-  **DEBT MANAGEMENT PLAN (DMP)**
-  **DEBT REORGANISATION OR CONSOLIDATION LOAN**
-  **DEBT RELIEF ORDER (DRO)**
-  **NEGOTIATED AGREEMENT WITH CREDITORS**
-  **COUNTY COURT ADMINISTRATION ORDER (CCAO)**

HOW DOES BANKRUPTCY WORK?

Bankruptcy is a formal court procedure which you can start or which one or more of your creditors owed at least £5,000 can start. Your assets (with certain exceptions) are sold to help pay your creditors. However, you can usually keep your personal belongings, the contents of your home and your tools of trade (which may include your car) unless they have a high value.

If you have surplus income after meeting your essential household and personal expenses, you will have to make payments out of your income for up to 3 years.

Your assets and income are dealt with by a licensed and regulated Insolvency Practitioner or by a government official called the Official Receiver.

Bankruptcy usually lasts for 1 year, and once you have been freed (discharged) from your bankruptcy, you are released from your debts (with certain exceptions). All of your unsecured debts will usually be written off in Bankruptcy, however there are some debts which will survive your bankruptcy and you will have an obligation to continue paying. These include:

- magistrates court fines
- payments ordered by a court by way of a confiscation order
- maintenance and child support payments
- student loans
- secured loans and other secured debts, such as debts secured with a charging order
- debts you owe because of the personal injury or death of another person
- social fund loans
- some benefits and tax credits overpayments.

PROS OF BANKRUPTCY

- Debts are written off, with certain exceptions (explained opposite).
- Creditors cannot take further action unless the debts are secured on your home or other property.
- It allows you to make a fresh start after only a year.
- You may be able to avoid having to sell your home if your spouse, partner or a relative can buy your share of its value after any debts secured on it have been paid.

CONS OF BANKRUPTCY

- Your bankruptcy is entered on a public register and is advertised.
- If you apply to the court for your own bankruptcy, you will have to pay a court fee and deposit. These fees are currently in the region of £700 in England and Wales and £640 in Northern Ireland (these fees are subject to change).
- You will remain liable to pay certain debts – in particular student loans, fines and some debts arising from family proceedings.
- Any business you have will almost certainly be closed down.
- Your employment may be affected.
- Certain professionals are barred from practising if they are made bankrupt
- You cannot act as a director of a company or be involved in its management unless the court agrees.
- You will be committing an offence if you obtain credit of £500 or more without disclosing that you are bankrupt.
- You may have a bankruptcy restrictions order* made against you for 2 to 15 years if you acted irresponsibly, recklessly or dishonestly.

* An order that will place restrictions similar to those in force while a person is bankrupt, which the Official Receiver may apply for.

INDIVIDUAL VOLUNTARY ARRANGEMENT (IVA)

HOW DOES AN IVA WORK?

You go to an Insolvency Practitioner who will prepare, negotiate and administer an arrangement for you to voluntarily repay your creditors. This may be done by using your spare income, a lump sum or other assets that you own. If you have surplus income after meeting your essential household and personal expenses or have assets that can be used to pay your creditors or have access to a lump sum, for example from a relative, you may then consider entering into an Individual Voluntary Arrangement (IVA).

Doing this will protect you from recovery action that your unsecured creditors may take, and will usually involve your creditors writing off part of what you owe them. A proposal for an IVA will only be approved where enough creditors vote in favour.

The person you choose to supervise your IVA must be licensed and regulated under insolvency law as an Insolvency Practitioner.

The Insolvency Practitioner will charge fees for preparing, negotiating and administering your IVA. These fees will be approved by the creditors you owe money to. They are split into a Nominee fee, usually estimated to be £1,500 and a Supervisor fee of approximately 15% of the money you pay into the arrangement, after the deduction of the Nominee fee. Please be advised that these fees are only a guideline estimation. Fees approved are solely down to the agreement of the creditors involved in the IVA. Before the practitioner asks you to sign up to an IVA, they should give you details of the fees they want to charge you and how these must be paid – whether as a lump sum or from the payments you make into the IVA.

DEBTS IN AN IVA

Debts that may be included in an IVA are (this list is not exhaustive):

- Loans
- Overdrafts
- Credit Cards
- Utility arrears
- Council tax arrears and current year
- Catalogues
- Store Cards
- Payday loans
- Some debts owing to HMRC for tax and national insurance arrears or tax credits overpayments
- Debts to family and friends
- Debts for professional services, i.e. solicitors, accountants, vets etc

Debts that may not be included in an IVA are (please note that you will remain liable for some of these debts after the completion of your IVA):

- Mortgages and secured loans
- Student loans
- Court fines
- Hire purchase agreements
- Child support arrears
- Social fund loans

PROS OF AN IVA

- Creditors who vote against your proposal are still bound by it.
- Creditors whose lending is unsecured cannot take any further action.
- Interest is usually frozen as long as you keep up your payments.
- Your Insolvency Practitioner will help you to prepare your proposal and will agree the level of your household and personal spending based on guidelines acceptable to creditors.
- Many Insolvency Practitioners will allow you to pay their fees for preparing your proposal monthly, as part of the IVA.
- You make only a single payment each month or quarter. Your Insolvency Practitioner is responsible for administering and distributing your payments.
- The terms of an IVA will usually enable you or your spouse or partner or a relative to make arrangements to buy your share of the net worth of your home or to make extra payments, rather than the home having to be sold. This may be done through a remortgage or a loan. (Net worth means its value after any debts secured on it have been paid.)
- On completion of the IVA, the balance of what you owe your creditors is written off.
- You may be able to continue running any business you have.

CONS OF AN IVA

- Your IVA is entered on a public register.
- The Insolvency Practitioner may require payment in advance for preparing your proposal and getting your creditors' agreement. Please note: McCambridge Duffy do not charge any advanced payment of fees.
- If there is some equity (value) in your home after taking account of the mortgage(s) on it, you will probably have to pay for your share, usually in the fifth year of your IVA, by remortgaging the property. It is likely that a remortgage may attract higher interest rates. If you cannot get a remortgage, you may have to continue making monthly or quarterly payments from your income, for up to another year.
- If your circumstances change, and your practitioner cannot get creditors to accept amended terms, the IVA is likely to fail. You will then still owe your creditors the full amount of what you owed them at the start, less whatever has been paid to them under your IVA.
- If your IVA fails, you may be made bankrupt.
- Your creditors may impose some expenditure restrictions on you for the duration of your IVA.
- An IVA is subject to approval solely by your creditors.

HOW DOES DEBT MANAGEMENT WORK?

You go to a debt management company who will negotiate with your creditors and manage your payments to them. The arrangement the company negotiates for you with your creditors is called a debt management plan (DMP).

Your creditors will want details of your assets, including your home, if you own it. This helps them to decide whether the offer you make through the debt management company is reasonable or whether they expect any of your assets to be sold so that they get a larger payment.

The individual or company you choose to manage your plan must be licensed and regulated under consumer credit law. Some will not charge you a direct fee for their services, but will get it from the creditors, for example out of the payments you to make to them. Others may make an initial charge for preparing, negotiating and administering your plan and then take the rest from your monthly payments. In either case, before it asks you to sign up for a DMP, the company should give you details of the fees it wants to charge you, and how you must pay them. It is estimated that the monthly fee to administer a DMP can range from £25 to £50.

A plan can last for 5 years or more, depending on how much you owe and what you can pay each month or quarter. Your debt management company should give you an estimate of how long the plan will last. They should also review the plan every year and creditors will expect to be given regular updates of your income and spending so they can see whether you can increase your payments.

DEBTS IN A DEBT MANAGEMENT PLAN

Debts that may be included in a DMP are (this list is not exhaustive):

- Loans
- Overdrafts
- Credit Cards
- Utility arrears
- Council tax arrears and current year
- Catalogues
- Store Cards
- Payday loans
- Some debts owing to HMRC for tax and national insurance arrears or tax credits overpayments
- Debts to family and friends
- Debts for professional services, i.e. solicitors, accountants, vets etc.

Debts that may not be included in a DMP are (please note that you will remain liable for some of these debts after the completion of your DMP):

- Mortgages and secured loans
- Student loans
- Court fines
- Hire purchase agreements
- Child support arrears
- Social fund loans

PROS OF DEBT MANAGEMENT

- Fair and open way of sharing payments, widely understood by creditors
- The debt management company will help you prepare your plan, including agreeing the level of your household and personal spending based on guidelines, which can then be used to put your case to the creditors.
- The debt management company will negotiate with creditors on your behalf, so offers are more likely to be accepted and interest frozen than if you try to do this yourself.
- You may be able to vary your payments if your circumstances change.
- You make single payments each month or quarter to the debt management company, which is responsible for administering all payments to your creditors.
- Any monthly payment you make should be passed on to creditors within 5 working days.
- Some debt management companies do not charge you a fee.
- Creditors may be prepared to write off the balance of what you owe after a period of time
 - If you have shown that you have made every effort to repay them as much as you can; and
 - you have maintained regular payments to the debt management company.

CONS OF DEBT MANAGEMENT

- The debt management company cannot force creditors to accept your proposal or freeze interest. A plan is not binding on creditors who refuse to take part in it, but they cannot refuse to accept any payments made to them.
- You remain liable to pay your debts until they are paid in full.
- Creditors could still take enforcement action against you, for example by getting a county court judgment and then an order, which creates a charge on your home*, even if you are keeping up your payments under the plan, unless they agree not to do so.
- You may not be able to make reduced offers if your circumstances worsen and you can no longer afford your agreed monthly payments.
- A plan can last for several years. However, some creditors may be prepared to freeze interest for only a shorter time. If interest and charges cannot be frozen for the full length of the plan, then the total amount you end up paying under the plan could be more than the original amount of your debts, and could extend the lifetime of the plan.

* Having a charge on your home means that if you do not repay the debt, the creditor has a claim on the proceeds if the property is sold.

HOW DOES THIS WORK?

You apply to a lender for a loan to reorganise, or clear your debts. These loans are often advertised as ‘consolidation loans’. This means you swap some or all of your creditors for just one creditor. If you own your home, the lender will probably want to take a charge* on it. You should seek independent advice about whether this would be in your best interests. You should shop around for the best deal from high street and internet lenders. If you have a poor credit rating, you may not be able to get loans on the best terms.

A consolidation loan will only help if:

- it is used to pay some or all of your existing debts
- the repayments on the new loan are no more than those you are already making towards your existing debts, and you can afford to make them.

Otherwise, the new loan will simply add to your debt burden and make your problems worse. You will also need to look very carefully at how long the loan will take to repay; what interest you are going to have to pay compared with what you are currently charged; and what charges or penalties there are, for example for late payments.

* Having a charge on your home means that if you don't repay the debt, the creditor has a claim on the proceeds if the property is sold.

PROS OF DEBT REORGANISATION OR CONSOLIDATION LOAN

- You will be making one monthly payment on one loan rather than many payments to different creditors.
- Your monthly payments may be lower, or at least should not be any higher.

CONS OF REORGANISATION OR CONSOLIDATION LOAN

- You may have to pay fees for arranging the loan. Always ask for full written details of all fees.
- If you have a poor credit rating, you may not be able to get a loan or you may be offered poor terms and conditions, for example a high interest rate.
- If the loan is secured on your house or other asset, then it could be taken from you (repossessed) if you do not keep up the payments.
- Interest rates often change over the loan period, making it difficult to work out what the total cost of the loan will be – check if the interest rate is fixed or variable.
- Consolidation loans are often offered over a longer period of time than your original debts.
- This means that even if the interest seems reasonable, the length of time you have to repay it can increase the overall cost of the loan significantly, so you end up paying more.
- If you don't clear all your existing borrowing, the new loan is likely to make your debt problems worse and make it more difficult for you to make all your repayments.

HOW DOES A DEBT RELIEF ORDER WORK?

You should first seek debt advice, and if a DRO is considered suitable, you will be referred to an approved intermediary*. They will check that your situation fulfils the criteria and will help you complete the online form, and submit it for you to a government official called the Official Receiver. The Official Receiver then makes the order, if appropriate.

*An approved intermediary is someone who has been approved by a competent authority chosen by the government.

To get a DRO in

England & Wales:	Northern Ireland:
<ul style="list-style-type: none"> • your debts must not exceed £30,000; • your assets must not exceed £2,000, (certain assets do not count, for example clothing, furniture and a vehicle worth less than £2,000); and • your surplus income must not exceed £75 a month after paying your essential personal and household bills. 	<ul style="list-style-type: none"> • your debts must not exceed £20,000; • your assets must not exceed £1,000, (certain assets do not count, for example clothing, furniture and a vehicle worth less than £1,000); and • your surplus income must not exceed £50 a month after paying your essential personal and household bills.

A DRO will last for 1 year, and once your DRO has ended you are released from your debts (with certain exceptions).

PROS OF A DEBT RELIEF ORDER

- Your debts will be written off at the end of the DRO. There are a few exceptions, as explained opposite.
- None of the creditors listed in the DRO application can take further action against you without the court's permission.
- It allows you to make a fresh start after 1 year.
- The fee (£90) is affordable and can be paid in instalments but the fee must be paid before the application can be made.
- You will keep your assets and a vehicle as detailed above.
- The approved intermediary ensures that you are given appropriate advice and that you fit the criteria for a DRO.

CONS OF A DEBT RELIEF ORDER

- Your DRO is entered on a public register.
- You cannot have a DRO if you have an existing bankruptcy order, an IVA, are subject to bankruptcy restrictions, or you have had a DRO in the last 6 years.
- You will not be able to have a DRO if you own a house, even if it has no equity (value).
- You will remain liable to pay certain debts – in particular student loans, fines and some debts arising from family proceedings.
- Your employment may be affected.
- Your DRO could be revoked (withdrawn) if you don't co-operate with the Official Receiver during the year your DRO is in force.
- You cannot act as a director of a company or be involved in its management unless the court agrees.
- You will be committing an offence if you obtain credit of £500 or more without disclosing that you are subject to a DRO.
- You may have a debt relief restrictions order* made against you for 2 to 15 years if you acted irresponsibly, recklessly or dishonestly.

* An order that will place restrictions similar to those in force while subject to a DRO, which the Official Receiver may apply for.

NEGOTIATED AGREEMENT WITH CREDITORS

HOW DOES THIS WORK?

You contact your creditors and negotiate an agreement to repay all or some of the debts.

Negotiated agreements may involve either or both of these:

- (1) payments from your income
- (2) payments from lump sums you receive, for example from an inheritance or from relatives.

Your creditors may be prepared, at the start or later, to agree to write off part of what you owe them. If they do so, they should confirm this agreement in writing.

(1) Payments from income: you need to work out how much you can afford to repay, after allowing for your essential household and personal spending such as mortgage or rent, heating, utilities, and housekeeping. You should offer to share any extra income among all your creditors, based on the amounts you owe them. This means that all your creditors are offered their share of what you can afford. You should also ask your creditors to freeze any interest or charges. Your creditors will expect you to give them regular updates of your income and expenditure so that they can see whether you can increase your payments.

(2) Payments from lump sums: you may make payments towards your debts from a lump sum you receive and which your creditors may agree to accept in settlement of what you owe – that is, they agree to write off the balance they are owed. However, if you do have extra income after paying your everyday expenses, they may expect you to make at least some payments from that as well.

If you are unable to make payments temporarily, for example because of a short-term illness, creditors may agree to accept no payments or token payments of say £1 a month, but only for a limited period.

PROS OF NEGOTIATED AGREEMENT WITH CREDITORS

- Fair and open way of sharing payments, widely understood by creditors.
- You can ask if you can reduce your payments if your situation gets worse or you face unexpected essential spending.
- You do not need an advice agency to negotiate these payments for you. You can do it yourself or ask an advice agency for help with drawing up your personal budget sheet and make offers to your creditors based on this.
- Creditors may be prepared to write off the balance of what you owe after a period of time if:
 - you have shown that you have made every effort to pay them back as much as you can, and
 - you have maintained regular payments to them.

CONS OF NEGOTIATED AGREEMENT WITH CREDITORS

- Creditors may refuse to agree with what you propose (but it is always worth asking them to reconsider) although they cannot refuse any payments you make to them.
- Creditors may refuse to freeze interest or charges (but it is worth asking them to reconsider).
- If you can only afford small payments, there may not be enough even to cover interest or charges, and your debts will increase.
- Creditors may refuse your proposal unless it's made through an advice agency, which will have independently reviewed your circumstances. You can complain to the Financial Conduct Authority if this happens.
- You remain liable to pay the full amount of your debts, although you may be able to persuade your creditors to agree to write off part, or even all of it, depending on your circumstances.
- Creditors could still take action against you, for example by getting a court judgment and then an order that creates a charge on your home, unless they have specifically agreed not to do so in return for the payments made under the informal arrangement.
- You are responsible for administering all the payments yourself and keeping creditors informed of your circumstances.

HOW DOES THIS WORK?

You can ask the court to make an administration order if:

- you owe no more than £5,000 to at least 2 creditors; and
- you have a court judgment entered against you by one of your creditors that you cannot pay in full.

Under the order, you must make weekly, monthly or quarterly payments from your income to the court, which shares them among your creditors, in proportion to the amounts you owe them. If you do not keep up the payments, the court may make an attachment of earnings order. This is sent to your employer, directing them to deduct amounts from your wages and pay them to the court for sharing among your creditors.

PROS OF A COUNTY COURT ADMINISTRATION ORDER

- None of the creditors listed on the administration order application can take further action against you without the court's permission.
- The court deals with the creditors and shares out the payments for you. There is no upfront fee – the court takes 10p of every £1 you repay.
- Interest and other charges are stopped.
- You can apply to make payments for a limited time, such as 3 years, using a 'composition order'.
- If your circumstances worsen, you can apply to the court to make reduced payments.

CONS OF A COUNTY COURT ADMINISTRATION ORDER

- Creditors can put objections to the court and ask to be left out of the order.
- If you do not keep up your payments, the order can be revoked (withdrawn) and the creditors can pursue you again.
- If the court makes an attachment of earnings order, your employer will find out about your money troubles.

DISCLAIMER

This booklet is not intended to provide complete advice about each of the options referred to herein and should not be relied upon in isolation. This booklet is merely part of McCambridge Duffy's general advice process. For case specific advice, please get in touch with one of our advisors.

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