

# **DEALING WITH MONEY WORRIES**

## **A GUIDE TO YOUR OPTIONS**



Scotland Edition



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# AN INTRODUCTION



Talking about money can be difficult but talking about money problems can be even harder. However, it is important that anyone who is struggling with their finances gets advice at the earliest opportunity. Finding it hard to pay for basics such as food or rent, using credit cards to pay for essentials or to repay another debt, or feeling stressed by money issues are often signs that an individual needs to seek advice about their situation.

Getting help with your finances at an early stage can prevent money problems from becoming unmanageable and may mean that you have more options available to you.

There are a number of different options for dealing with money difficulties, ranging from budgeting advice to debt management solutions and statutory insolvency procedures. All these options, together with where to go for additional advice, are outlined in this guide. This guide includes some of the key terms you might come across (see pages 17-18).

This guide has been put together by R3, the trade association for the UK's insolvency, restructuring, advisory and turnaround professionals. R3's members have extensive experience of helping businesses and individuals who are experiencing financial problems. Our members include insolvency practitioners, who are trained and licensed to give

personal debt advice and administer statutory personal insolvency procedures. Many insolvency practitioners may offer a free consultation to people who are looking for help on their finances and who want to explore how they might be able to resolve their situation. To find an insolvency practitioner who may be able to provide advice, please visit R3's website, [www.r3.org.uk](http://www.r3.org.uk).

There is a wide range of sources of free and impartial debt advice, including insolvency practitioners and charities. When seeking advice, it is important to make sure that it is from an impartial source, regulated by the Financial Conduct Authority or, for insolvency advice, an insolvency regulator. Contact information for some providers of debt advice are at the back of this guide.

It is very easy for finances to have a negative impact on mental health. Contact information for organisations who can help with mental health difficulties are also included in this guide (see page 20).

Information in this guide is intended to provide an overview only and relates to procedures in Scotland. It is not a replacement for seeking advice specific to your circumstances.

## TYPES OF SOLUTION

# AN OVERVIEW

Everyone's circumstances are different so what works for someone else might not work for you. It is important to find a solution which fits your unique circumstances. Seeking expert advice is the best way of finding the right solution for your situation.

In this guide, we have divided available solutions into two broad categories:

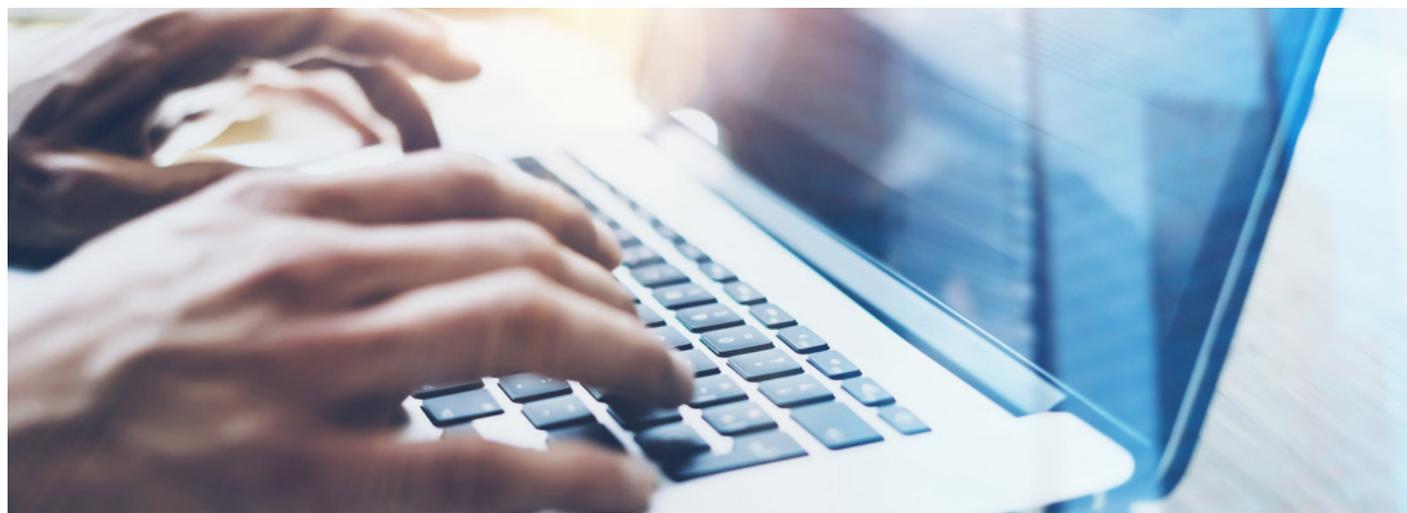
## Informal solutions:

These are solutions which may not affect your assets (that is, the things you own) and can be put in place by you – either by yourself, or with the help of an adviser. They will usually involve paying off what you owe in full and may not prevent your creditors from taking separate action to seek repayment.

## Statutory solutions:

These procedures bind you and your creditors (that is, the people and companies to whom you owe money) into a formal agreement and can prevent creditors from taking further action to seek repayment. These procedures will involve an adviser assisting you and can affect your assets. Usually, they will include an element of debt forgiveness or will release you from what you owe once the procedure is over. Before you decide on which procedure may be best for your personal circumstances you will be provided with what is called 'money advice' by a trained and approved 'money adviser.' You can obtain free, independent advice on the options available to you from Citizens Advice Scotland, Money Advice Scotland or local authority money advisers. An insolvency practitioner or one of their staff experienced in personal insolvency matters or a solicitor can also offer financial advice but may charge for their service. The requirement for you to receive money advice is mandatory in terms of statute in Scotland. As part of the provision of money advice, your ability to make a contribution to any of the available processes for the benefit of your creditors, will be assessed using the Common Financial Tool (CFT). Following this assessment, the money adviser will be better able to provide you with the correct advice to suit your circumstances.

**In summary, before you decide upon any procedure you must receive money advice from an approved money adviser who has assessed your personal circumstances using the CFT.**



## TYPES OF SOLUTION

# INFORMAL SOLUTIONS

This guide covers the following types of informal solutions for dealing with your finances:

1. **Budgeting to take control of your finances and ensuring you are maximising income**
2. **Negotiating with your creditors**
3. **Consolidation loans**
4. **Debt management plans**

This guide covers how these options work in Scotland. Options in England & Wales and Northern Ireland are similar but are not exactly the same.

## 1. Budgeting

A simple, early step to take when thinking about money is to budget. Write down how much income you have coming in each month and what your outgoings are. You also need to work out how much you owe, how much you can afford to repay, and when and how often you can repay it.

Working out your budget is the starting point for dealing with your finances, and you won't be able to choose a solution to deal with your situation without one. Advice agencies will typically expect you to prepare a budget before they can discuss your options, though many will help you put a budget together.

Once you have drawn up a budget, you should look at your outgoings to see whether there is any non-essential spending which could be reduced. You should also look at your income and make sure that you are claiming all the benefits to which you are entitled.

Your budget will tell you how much money you have each month, if any, to put towards paying off your debts.

## 2. Negotiating with your creditors

You can contact your creditors one by one and offer each of them a fair share of what's available to pay what you owe. You can base your offer on the budget

you have put together. If you have nothing available, you can ask creditors to accept token payments of £1 a month or no payments until your circumstances change.

If your circumstances change, you can change the payments to your creditors. You will be aiming to pay your debts back in full, which may take some time.

Many creditors, particularly lenders such as banks and other finance companies, will have processes in place to help people pay back what they owe. The sooner you speak to your creditors, the sooner they can help you.

## 3. Consolidation loans

If you have lots of different debts and are struggling to keep up with multiple re-payments, you might be able to merge them together into one loan. This is a consolidation loan. This type of loan replaces multiple monthly payments to multiple lenders with one, more manageable payment.

You should be careful not to take on further credit until a consolidation loan is cleared, as this could lead to you ending up in a worse position than the one you started in.

Consolidation loans should only be used where you can afford to keep up the repayments until the loan is paid. It is vital that you seek independent financial advice before you take out this type of loan. Companies which offer consolidation loans should be authorised by the Financial Conduct Authority (FCA).

## 4. Debt management plans

### What is a debt management plan?

A debt management plan (or DMP, as they are sometimes known) is an agreement between you and your creditors which makes changes to the way you repay your debts. Debt management plans are very flexible and they are not all the same. Typically, however, a debt management plan will involve you making regular payments into the plan which are then distributed among those creditors who have agreed to take part. Like a consolidation loan, a debt management plan can replace several different monthly payments with one affordable monthly repayment.

Often, the aim of a debt management plan is to repay what you owe in full. This may involve lower monthly payments, but it could mean that you are repaying what you owe over a longer period than originally agreed.

Debt management plans will only affect those creditors which agree to the plan, and any party to the plan (you or any of your creditors) can pull out of the agreement at any time.

### How do I enter?

It is possible to set up a debt management plan yourself by talking directly to your creditors, but there are also companies which can do this on your behalf. These companies will have experience of helping people to agree plans, and they may charge a fee for doing so. This fee is often deducted from your payments into the plan. Companies offering to help put a debt management plan together should be authorised by the FCA.

Some organisations may offer to help you set up and manage a debt management plan at no cost to you. These organisations include StepChange Debt Charity and Citizens' Advice Scotland.

### Which of my debts and creditors will be affected?

Debt management plans will only affect those creditors who agree to be bound by the plan. Creditors may agree to freeze interest and charges as part of the debt management plan but they are not obliged to do so.

### What will happen to my assets and income?

Your assets will not be affected by the debt management plan. Your disposable income will be used to make the payment into the debt management plan.

### If I own my home, what will happen to it?

If you keep up with your payments to your debts and your rent or mortgage, your debt management plan should have no direct effect on your home.

### Who oversees the debt management plan?

A debt management plan is usually arranged on your behalf by a third party provider, for example, a debt charity or debt management company. They will oversee the debt management plan on your behalf unless you have arranged the plan directly with your creditors, in which case you will oversee it.

### How long will a debt management plan last?

The length of your debt management plan will depend on your individual circumstances. It will depend on your level of debt and how much you can afford to repay each month. As above, the aim of a debt management plan is often to repay what you owe in full over a longer period of time. Alternatively, the plan can be used to manage your affairs until your circumstances improve and you can return to making payments to your creditors under the original terms.

### How else might I be affected?

A debt management plan could affect your credit history.

### Can a debt management plan be cancelled or extended?

A debt management plan is not legally binding. You are not tied in for a minimum period and you can cancel at any time. However, this also means that your creditors are not bound by the agreement and may change their mind and restart work to collect what you owe them according to the original terms of the loan.

### How do I pay for the debt management plan?

If you come to an agreement with your creditors yourself, it will not cost you anything. If you use the services of a debt management plan provider, they will charge a fee to receive your monthly payment and to distribute this to your creditors. This fee is usually deducted from your monthly payment into the plan. There are some debt management plan providers who do not charge a fee.

## TYPES OF SOLUTION

# STATUTORY SOLUTIONS

The following options for resolving money difficulties are called 'statutory solutions' because they are covered by statute and regulations.

These solutions bind you and your creditors. Your creditors will be bound by the solution regardless of whether they have agreed to it (with some exceptions).

These solutions are open to people who generally cannot pay back a debt when it falls due.

This guide covers the statutory solutions which are available in Scotland. These are:

1. **Debt Arrangement Scheme (DAS) – this is NOT an insolvency process and is the only official debt management scheme in Scotland**
2. **Trust deeds**
3. **Bankruptcy (sometimes referred to as Sequestration).**

This guide covers how these options work in Scotland. Options in England & Wales and Northern Ireland are similar but are not exactly the same and are not covered in this guide.

**Many insolvency practitioners offer a free initial consultation to people who are looking for help with their finances and want to explore their options, or understand how they might be able to resolve their situation. R3's member search facility can help you to find a licensed insolvency practitioner in your area.**

## 1. Debt Arrangement Scheme (DAS)

### What is a DAS?

A DAS is a Scottish Government-backed debt management scheme that allows you to repay your debts through a debt payment programme (DPP) over an extended period of time while giving you protection from creditors who may be taking action against you to recover a debt. Furthermore, interest and charges are frozen. For the lifecycle of the DAS, if you wish, you will be given access to a dedicated web portal that gives you online access to the DAS case management system – enhanced DAS Electronic Network (eDEN). Your money adviser will provide you with log-in details and a password to monitor progression and review the status of your DAS.

Under a DAS, you would commit to repaying your debts based on your disposable income following assessment using the CFT. The length of repayment will be dependent on the amount of debt and how much you can pay. Creditors will receive regular payments towards the debts owed to them under the terms agreed in the DAS.

There are options with DAS to enter a DAS jointly if you have joint debt with a partner (where that partner is a spouse or civil partner of each other; or living together as if spouses or civil partners of each other) and if you are in business with a partner you could be eligible for a Business DAS. Whilst these are options, they are not discussed in detail in this booklet.

### How do I enter?

To be eligible for the DAS, you must have one or more debts and the following must apply:

- A resident in Scotland
- Have sought the advice and assistance of a DAS-approved money adviser
- Want to repay your debts without the threat of creditors taking legal action against you
- Have had your income and expenditure assessed using the CFT
- Have been provided with a Debt Advice and Information package (a booklet providing important information for you to help you deal with your creditors)

However, you would not be eligible for DAS if any of the following apply:

- You are bound by a protected trust deed
- You are bankrupt or subject to a bankruptcy restrictions order
- Your DAS application only includes one debt and you are subject to a time to pay direction under section 1 (time to pay directions) or section 5 (time to pay orders) of the Debtors (Scotland) Act 1987, in relation to that debt
- The DAS application only includes one debt and you are subject to a time order under section 129 (time orders) of the Consumer Credit Act 1974, in relation to that debt
- You are paying a debt or debts under a conjoined arrestment order. However, if a creditor, whether the creditor is involved in the conjoined arrestment order or not, has tried lawfully to enforce another debt owed, then you may be eligible to apply for DAS.

### **How do I pay for a DAS?**

A charge is made to your creditors for the provision of the payment distribution service and application fee. The maximum fee to be charged for the DAS application is 2% and the payment distributor's fee is 20% of the amount due to be paid a creditor.

Creditors will receive 78% of the debt owed to them if you complete the debt payment programme.

A payment distributor will ensure that your creditors are paid.

Payments distributors are companies which gather payments from the debtor and distribute them to creditors as per the agreed DAS process.

The money adviser will choose who to appoint as payments distributor to each debt payment programme.

### **What is a debt payment programme?**

A debt payment programme under a DAS allows you to repay your debt over an extended period of time for any amount of money or for any reasonable length of time.

A proposal is sent to all your creditors for consideration, and they are given 21 days to respond with their acceptance or rejection to the terms of the programme. If a creditor does not respond within 21 days, they will be treated as having accepted the programme.

The DAS Administrator can still approve the debt payment programme if it's fair and reasonable to do so, even if some creditors do not accept the terms.

When a debt payment programme is approved, creditors must comply with the DAS regulations.

If your circumstances change, the debt payment programme can be varied to take account of this. You, a creditor or a money adviser acting on your behalf can apply to the DAS Administrator to vary the approved programme. You can also apply for a payment break of up to six months if your disposable income has reduced by 50% or more as calculated by the CFT and it is envisaged the disposable income will be reduced for the period of deferment. There is no limit to the number of payment breaks you can apply for. You can also request a short-term financial crisis payment break of one month and up to two in a 12-month period in certain circumstances, for example if you had to pay for car repairs. In both situations, the term of the debt payment programme will be extended to cover any break.

If you do not comply with the conditions of the programme, it may be revoked, and creditors will be able to pursue legal action against you. Creditors will then be able to add on all interest, fees, penalties and charges that would have been payable if the DAS debt payment programme had never existed.

If the DAS is revoked because you do not comply, you would discuss the other options available to you such as entering a trust deed or bankruptcy.

### **What is the difference between a DAS administrator and a money adviser?**

A money adviser is someone who is approved to advise you on your suitability for a DAS. An adviser would usually talk to you about your options and look at your financial situation in detail. If a DAS is considered the most suitable option, the money adviser will use the CFT to determine how much you can repay to your creditors each month.

The DAS Administrator is the Accountant in Bankruptcy (AiB) and will decide whether to approve your application or not and is responsible for the approval of debt payment programmes, approving money advisers, approving payments distributors and maintaining the DAS Register.

The money adviser will use the CFT to assess household income and expenditure to help determine the level of contribution that you might pay towards your debts after taking into account your financial circumstances.

## What are the conditions of a debt payment programme?

Once a DAS debt payment programme has been approved, you must comply with certain conditions, specified by law. You must:

- Make the first payment under a programme within 42 days of the programme being approved
- Make all payments under the programme when they are due
- Pay continuing liabilities/expenses (rent, council tax etc.) when due for payment
- Make no other payment to a creditor taking part in the programme other than a payment due under the programme (except for a continuing liability)
- Not apply or obtain credit over and above the allowed amount unless permitted by the DAS Administrator
- Notify your money adviser or the DAS Administrator of a change of address or any changes to circumstances within seven days
- Adhere to information requests by your DAS Administrator or money adviser within 10 working days
- Make payments in respect of credit agreed and obtained under the rules of DAS when they are due
- Give all notices and intimation as required by a debtor under the regulations
- Complete and submit a tax / duty return or declaration on time and pay any sum due
- Notify the DAS Administrator as soon as possible if a money adviser does not act on your behalf, unless the money adviser has either resigned or been suspended or revoked

A debt payment programme may also be subject to further conditions by a money adviser or DAS Administrator, subject to approval. This could include a request to gain money from the sale of an asset, guarantee of extra payments such as a lump sum from any future income, or any other reasonable condition.

If you breach any of the conditions, your programme may be revoked as mentioned above.

### Conclusion of a DAS?

A DAS reaches its conclusion when you make all payments as agreed, make a lump sum payment equivalent to all outstanding payments due or all

creditors agree in writing to complete the programme prior to the scheduled end.

At this stage, you cannot be held liable for any further payments towards debts included in the programme, nor any interest or charges which would have accrued during the scheme.

Once the programme is completed, all your details are removed from the DAS Register and creditors will be informed their debts have been repaid. If the programme is being paid directly from the debtor's wages, the DAS Administrator or the money adviser will contact the employer.

On completion of a debt payment programme, all interest, fees, penalties, and other charges which would have been owed if it had not been approved will cease to be owed. A DAS will appear on your credit file for six years.



## 2. Trust deeds

### What is a trust deed?

A trust deed for creditors is a voluntary deed providing for (i) your assets (other than exempt assets) and (ii) agreed contributions from income for a set period of time to be transferred to a trustee who will use them to pay all, or part of the debts owed to your creditors. A trust deed may, and usually will, become protected, in which case it is binding on all creditors, but if it does not become protected for any reason, it is not binding on creditors unless they have specifically agreed to it.

As with a DAS, before you decide that a trust deed is appropriate to your financial circumstances, you must receive money advice from an approved money adviser and the money adviser must use the CFT to assess what contribution you will be able to pay to the trust deed. The contribution period is 48 months. A money adviser could be an Insolvency Practitioner or one of their staff experienced in personal insolvency matters.

A trust deed may help relieve the stress of unmanageable debt payments into a single regular payment and offer protection from creditor legal action.

### What is a protected trust deed?

This is when the trust deed becomes binding on all creditors, following a statutory process and assuming no objections are received from creditors that reach the statutory thresholds. Your money adviser will explain this process to you in detail. Provided

you comply with the terms of the trust deed, once protected, creditors can take no further action to pursue the debt or to make you bankrupt unless a creditor or creditors who satisfy certain conditions, petition the Court that the trust deed is prejudicial to the creditor or creditors' interests.

Also, once protected, legislation prevents you from applying for your own bankruptcy or applying for a DAS.

If you acquire any new debts after you sign the trust deed, they will not be protected from action by your new creditors. These creditors must be paid on normal terms.

There is a £5,000 minimum level of debt that you must owe before a trust deed can become protected.

### How do I enter?

You can obtain free, independent advice on the options available to you from Citizens' Advice Scotland, Money Advice Scotland or local authority money advisers. An insolvency practitioner or one of their staff experienced in personal insolvency matters or a solicitor can also offer financial advice but may charge for their service.

### Money adviser responsibilities

A money adviser is an individual approved to advise you on your suitability for a trust deed. An adviser would usually talk to you about your options and look at your financial situation in detail. If a trust deed is considered the most suitable option, the adviser will assist you in preparing for a trust deed.

The money adviser will use the CFT to assess household income and expenditure to help determine



the level of contribution that you might pay towards your debts after taking into account your financial circumstances. This will be assessed with reference to documentary information the money adviser will ask you to provide about your income and expenditure.

Where a trust deed application is granted, the trustee in the trust deed takes responsibility for its administration. The appointed trustee in a protected trust deed must be a qualified insolvency practitioner, however, a money adviser may still give advice to a debtor.

## **Matters to consider when entering a Protected trust deed**

Under a protected trust deed, there are a number of matters you must be aware of:

- You can request your home is excluded from the trust deed, if there is no, very little or negative equity in the property and should the secured lender agree. However, even if your home is excluded from the trust deed, secured creditors may still take action to take possession of your home if you fall behind with mortgage payments
- A protected trust deed prevents you from applying for your own bankruptcy or for a debt payment programme under DAS
- If any new debts are taken on after a trust deed is signed, you will not be protected from legal action by these new creditors
- You can choose who your trustee will be, and the trustee will charge for the work they do. A trustee will set out a fixed administration fee and an additional fee based on a percentage of the funds collected during the trust deed. These fees will be recovered from money gathered by the contributions you make and by the trustee selling the agreed assets during the trust deed and should not be paid separately by you
- After signing a trust deed, a trustee will prepare a notice for publication in the Register of Insolvencies. This is a public record and means the trust deed will come to the attention of organisations like banks and credit reference agencies.
- If a majority in number, or no fewer than one third in value of the notified creditors object to the trust deed being granted protected status, a trust deed will not gain protection and creditors may then be able to petition for your bankruptcy
- At the end of the trust deed, you will be discharged from all your trust deed debts, providing the trustee considers you have met your obligations

- The trustee will apply to the AiB for your discharge, and on granting, creditors will not be able to pursue money owed to them prior to the signing of the trust deed. Your discharge will be recorded in the Register of Insolvencies

If you sign a protected trust deed, it will affect your credit rating. The trust deed will stay on your credit history for six years after the procedure starts.

Entering a trust deed could also prevent you from doing some jobs, such as holding public office, and working in financial services.

Should you fail to comply with any of your obligations under a trust deed, your trustee can ask the court to make you bankrupt.

## **What are my responsibilities?**

During your trust deed, you must:

- Make the agreed payments
- Co-operate with your trustee

A trust deed will normally last for 48 months.

## **Consequences of signing a trust deed**

Before signing a trust deed, you need to understand what you are signing and the responsibilities you are undertaking.

Before you sign, a trustee must:

- Give advice about the conditions and consequences of signing a trust deed
- Inform you of the other options available to you including bankruptcy and DAS
- Give you a copy of the Scottish Government's Debt Advice and Information Package
- Give you adequate time to consider the consequences of and alternatives to a trust deed
- The trustee must provide you with an indication of what they will charge before the trust deed is signed. You also need to be aware that a protected trust deed is likely to affect your credit rating and may prevent you from doing some jobs. If the trust deed fails to become protected, creditors may be able to apply to declare you bankrupt.

# 3. Bankruptcy (sometimes referred to as Sequestration)

## What is bankruptcy?

Bankruptcy is a solution designed to help you when you are insolvent, repay as much of what you owe as possible, while writing off debts you cannot pay.

In a bankruptcy, your assets pass into the control of a 'trustee' who may sell these assets to raise money to repay your creditors. The trustee will either be the AiB or a licensed insolvency practitioner.

During a bankruptcy, you will be subject to some restrictions for one year. Once the year is up and provided you have co-operated with your trustee throughout, it is likely that you will be discharged from bankruptcy.

Once you have entered bankruptcy, your creditors will not be able to take action against you in relation to debts that were owed prior to the date of bankruptcy.

During a bankruptcy you will still need to keep up with ongoing commitments, like rent, mortgage payments, or bills, including new credit card or utility bills.

## How do I enter?

There are two ways to enter bankruptcy. A creditor, or group of creditors, may ask the court to make you bankrupt if you owe them £5,000 or more.

Alternatively, if you wish to make yourself bankrupt, you may apply online to the Accountant in Bankruptcy. You can ask a money adviser to help you with this.

To apply for your own bankruptcy, you must have had money advice from a qualified money adviser or an approved insolvency practitioner. In addition, as with DAS and trust deed, you will need to have your income and expenditure assessed by a money adviser (who can be an insolvency practitioner) using the CFT in order for you to find out if you have available surplus income to make payments towards your debts. This will help you to decide following the money adviser's advice, whether bankruptcy is the most appropriate option for you. If you are in employment or receive other income (excluding benefit only income) you will be required to pay any surplus income towards your bankruptcy. Payments will last for 48 months or the equivalent weekly period unless your circumstances change.

The money adviser must also give you a copy of the Scottish Government's [Debt Advice and Information Package](#).

There is a form in the Debtor Application Pack which your money adviser or insolvency practitioner must sign to confirm they have given you money advice. You cannot submit an application for bankruptcy without this declaration being signed.

A money adviser will be able to assist you to fill out a debtor application form to apply for bankruptcy. This can be done by applying online. You must pay the full bankruptcy application £150 fee before your application will be processed. If you are applying through the minimal asset process this fee will be £50. Application fees are currently waived if you are in receipt of a qualifying benefit.

No application fee for bankruptcy if you are assessed by the Commons Financial Tool as having no surplus income.

## Qualifying criteria

You may apply for bankruptcy provided that you fall within one of two sets of qualifying criteria. The first of these applies where you have minimal assets. The other applies where you have assets.

### (1) Minimal asset cases

This ground applies where:

- You have been assessed using the CFT as requiring to make no contribution from your income; or
- You have been in receipt of prescribed benefits for six months before the application is submitted
- Your total debts are not more than £25,000 (a student loan will not be taken into account when calculating the total debt amount)
- You do not own assets worth more than £2,000
- You do not own a single asset worth more than £1,000
- You do not own land
- You have been issued with a certificate for bankruptcy
- You have not been bankrupt under the minimal-asset process in the ten previous years, and
- You have not otherwise been bankrupt in the previous five years

The CFT is a statutory method of assessing what proportion of their income a debtor should contribute

towards their debts after taking into account their financial circumstances.

When assessing the value of your assets, no account is to be taken of any assets that would be excluded from vesting in a trustee in bankruptcy. This would apply to, for example, furniture and other items needed for basic and essential living in a family home in a family home or tools of trade. Also excluded is any motor vehicle worth not more than £3,000.

A certificate for bankruptcy is a certificate issued by a money adviser confirming that the debtor is unable to pay their debts. Money advisers include an insolvency practitioner or one of their staff experienced in personal insolvency matters.

## **(2) Asset criteria**

If you do not fall within the first criteria, then you may still qualify if you can satisfy the below conditions -

- You have debts of not less than £3,000.
- You have not been made bankrupt in the previous five years
- You have received money advice from a money adviser
- You have given a statement of undertakings, and
- you must be unable to pay your debts when they fall due
- You have received a Debt and Information Package Advice

Also, you must have been granted a certificate for bankruptcy, or had signed a trust deed that has not achieved protected status.

## **Which of my debts and creditors will be affected?**

With some exceptions, your bankruptcy will affect your unsecured debts (see glossary, page 20). Once you are bankrupt, your unsecured creditors will not be able to take action against you in relation to any of the debts you owed as at the date of bankruptcy. It is important to remember that this does not apply to secured creditors, such as a mortgage provider. They may still take possession of your property if you do not keep up with your mortgage payments.

As with all statutory solutions, there are some debts which cannot be written off by the procedure. Once the bankruptcy ends, you will still owe the following:

- Criminal or court fines

- Student loans
- Debts that were taken out fraudulently
- Secured debts where you wish to keep the asset that the credit is secured against
- Debts that were taken out after your bankruptcy was awarded

## **What will happen to my assets and income?**

In a bankruptcy, any assets you own at the time of the bankruptcy award which vest in the trustee, or which you acquire up to four years after the date of bankruptcy, will pass into the control of a trustee. The trustee may sell these assets to raise money to repay your creditors.

There are some assets which will not pass to the trustee. These include everyday household items (such as items needed for basic and essential living in a family home), tools you might need to do your job, and cars worth less than £3,000

The trustee may abandon assets to you for a nominal sum if it is not cost-effective to sell them.

The trustee also has the power to recover assets you have given or sold at an undervalue to someone else in the period before your bankruptcy.

In most cases you will usually be able to keep any money you have put into a pension, although any money you are receiving as part of a pension will be considered as income.

Your trustee may require you to make a contribution to your creditors out of your income if you have sufficient 'surplus income' to make a contribution to the bankruptcy estate every month. This is known as a Debtor Contribution Order (DCO) and lasts for 4 years. Your ability to pay a DCO will be decided by the AiB following assessment of your income and expenditure by the money adviser using the CFT.

## **If I own a home, what will happen to it?**

Your trustee will seek to access any equity you have in your home and use this money to help repay your creditors. Equity is the difference between the value of your home and any sums owed to anyone with a security on your property, such as your mortgage provider. If you are able to raise money equivalent to the equity in your home, you may purchase the 'interest' from your trustee. A third party, such as your partner, a relative, or a friend, may also offer to purchase the equity in your home. If you are unable to raise funds to purchase the equity, you may be

required to sell the property or hand the property to the trustee to sell.

If you have low or 'negative' equity (where your home is worth less than the value of what you owe to the mortgage provider), the trustee will be unlikely to try to sell your home.

Once you have been made bankrupt, if you do not continue to make your mortgage payments, your secured lender can repossess the house: as a secured debt, your mortgage is not covered by the bankruptcy. If your mortgage provider is not able to recover all that you owe it once it has sold the property, the outstanding debt becomes an unsecured debt in your bankruptcy and you will no longer owe it once you are discharged.

### **Who administers and supervises the bankruptcy?**

Your bankruptcy will be administered by the trustee (who could be an insolvency practitioner or the AiB). All bankruptcy processes are supervised by the AiB.

The trustee will look into your finances and assess your situation. This might involve an interview with you. You must provide your trustee with any information they request from you, and you must provide them with full details about your assets and what you owe. Failure to cooperate with your trustee could lead to your discharge from bankruptcy being deferred and will increase the costs associated with your case. These costs will be paid for by the sale of your assets, if you have any assets to sell.

The trustee is responsible to all your creditors equally but in a strict order of priority in terms of legislation. The trustee does not represent one particular creditor.

### **How long will a bankruptcy last?**

You will be subject to bankruptcy restrictions for one year. At the end of the year, assuming you co-operate with your trustee, you will be 'discharged' and will not be responsible for the debts you owed at the start of the bankruptcy. However, if you were awarded bankruptcy under the minimal asset process, you will normally be discharged after six months.

After your discharge, your trustee will still retain the assets you had at the start of the bankruptcy and any assets acquired during a 48-month period and they will continue to work to raise money to repay your creditors. This process can carry on long after you have been discharged.

### **How else might I be affected?**

If you are in a bankruptcy, you will be subject to the following restrictions:

- You cannot borrow more than £2,000 without telling the lender about the bankruptcy
- You cannot act as a company director
- You cannot start, manage or promote a company
- You cannot work as an insolvency practitioner
- You cannot act as a Member of the Scottish Parliament, as a member of any local council, a Justice of the Peace or a member of a school board
- May be requested to undertake financial education

This is not a complete list of your responsibilities. Your trustee will tell you exactly what is expected of you.

These restrictions will lift once you have been discharged. It is a criminal offence to break the restrictions.

Some private organisations/employers may impose their own restrictions on people who have been made bankrupt.

Your bankruptcy will remain on your credit history for six years from the date it started. Once you have been made bankrupt, your name will also be added to the AiB's Register called The Register of Insolvencies (or ROI for short). This register is publicly available. Your name will be removed once the trustee is discharged.

### **Can a bankruptcy be cancelled or extended?**

If you have not complied with your obligations during the bankruptcy, you may be made subject to a Bankruptcy Restriction Order. This Order may last between two and 15 years. Under such an Order, the restrictions imposed upon you by the bankruptcy will continue.

You will be informed of your discharge either by post or email depending on your preferred method of communication. Your discharge is dependent on your co-operation. Your trustee can defer your discharge indefinitely if you do not cooperate.

It is possible for you to apply to end your bankruptcy sooner, this is known as Recall. Recall can be achieved by applying to the AiB (or the court in specific circumstances). Your creditors can object



to your recall. The AiB can only grant a recall where you have the funds to pay all your debts, fees and charges.

### **How do I pay for bankruptcy?**

Once you have entered bankruptcy, statutory costs and the trustee's costs will be paid for through the realisation of your assets, if you have any. If you do not have enough assets to pay for all the costs and debts associated with your case, you will not be asked to pay more.

In cases where the trustee is an insolvency practitioner, the fees will often be based on the time

the trustee has spent on the case. Cooperating with the trustee is therefore an effective way to keep their fees down, cooperation will mean the trustee does not have to carry out additional tasks as they seek to fulfil their legal duties. The Trustee's fees and expenses are approved by the Commissioner(s) elected by the creditors or the AiB by default. The AiB charges 17.5% to the estate to do this.

These fees will be paid out of the realisation of bankruptcy assets.

	DEBT ARRANGEMENT SCHEME	TRUST DEED	BANKRUPTCY
<b>Are there any limits on what I can owe, own, or earn before I enter?</b>	<p>You must have <u>one or more debts</u> and:</p> <ul style="list-style-type: none"> <li>You are a resident in Scotland</li> <li>You have sought the advice and assistance of a DAS-approved money adviser</li> <li>You want to repay your debts without the threat of creditors taking legal action against you</li> </ul>	<p>There is a £5,000 minimum level of debt before a trust deed can become protected</p>	<p>Minimal asset process:</p> <ul style="list-style-type: none"> <li>You must do not owe more than £25,000.</li> <li>You do not own a single asset worth over £1,000 (excluding a vehicle which value does not exceed £3,000)</li> <li>The total value of your assets do not exceed £2,000</li> <li>You must have been in receipt of benefits only for the last six months or a money adviser has assessed your income and expenditure using the CFT and you have no surplus to pay a contribution.</li> </ul> <p>If you do not meet these conditions you will be eligible for a full administration bankruptcy. In this case, you must owe a debt of £3,000 or more.</p>
<b>What debts and creditors will be affected?</b>	<p>Most unsecured debts are included in a DAS such as:</p> <ul style="list-style-type: none"> <li>Personal Loans, including payday loans</li> <li>Overdrafts</li> <li>Credit cards</li> <li>Store cards</li> <li>Council tax arrears</li> <li>Utility bill arrears</li> <li>As well as arrears to secured creditors, for example hire purchase payments</li> </ul> <p>Excluded are secured creditor debt for example ongoing payments for hire purchase or mortgage, student loans, child support</p>	<p>A trust deed will include most unsecured creditors such as:</p> <ul style="list-style-type: none"> <li>Personal Loans, including payday loans</li> <li>Overdrafts</li> <li>Credit cards</li> <li>Store cards</li> <li>Council tax arrears</li> <li>Utility bill arrears</li> </ul> <p>A trust deed cannot include debts such as:</p> <ul style="list-style-type: none"> <li>Criminal or court fines</li> <li>Any debt that has been incurred through fraud</li> <li>Student loans</li> <li>Money owed to a creditor whose debt is secured on your property for example a mortgage or a secure loan</li> </ul>	<p>Bankruptcy covers all your debts and creditors except for 'secured' debts where you wish to keep the asset that the debt is secured against, as well as the following:</p> <ul style="list-style-type: none"> <li>Student loans,</li> <li>Criminal or court fines,</li> <li>Any debt due to fraud including benefit overpayments,</li> </ul> <p>Once you are bankrupt, your unsecured creditors will not be able to take their own actions to ask you to repay what you owe them</p>
<b>How do I enter?</b>	<p>You can speak to a money adviser who is approved to advise you on your suitability for a DAS. An adviser would usually talk to you about your options and look at your financial situation in detail. If a DAS is considered the most suitable option, the adviser will determine how much you can repay to your creditors each month</p> <p>You need to be a resident in Scotland</p>	<p>You can obtain free, independent advice on the options available to you from Citizens' Advice Scotland, Money Advice Scotland or local authority money advisers. An insolvency practitioner or one of their staff experienced in personal insolvency matters or a solicitor can also offer financial advice but may charge for their service</p> <p>You need to be a resident in Scotland.</p>	<p>There are two ways to enter bankruptcy. A creditor, or group of creditors, may ask the court to make you bankrupt if you owe them £5,000 or more.</p> <p>Alternatively, if you wish to make yourself bankrupt, you may apply online to the AiB</p> <p>To apply for your own bankruptcy, you must have had money advice from a qualified money adviser or an approved insolvency practitioner</p> <p>You need to be a resident in Scotland</p>
<b>How much does it cost?</b>	<p>A charge is made to your creditors for the provision of the payments distribution service and application fee. The maximum fee to be charged for the DAS application is 2% and the payment distributor's fee is 20% of the amount due to be paid a creditor</p>	<p>You can obtain independent advice on the options available to you from Citizens Advice Scotland, Money Advice Scotland or local authority money advisers. An insolvency practitioner or one of their staff experienced in personal insolvency matters or a solicitor can also offer financial advice but may charge for their service</p> <p>The appointed trustee in a trust deed who must be a qualified insolvency practitioner, will charge a fixed administration fee and an additional fee based on a percentage of funds collected during the trust deed for the work they do in administering the trust deed. The trustee must give the debtor (and the creditors in due course on the prescribed forms) an indication of what they will charge before the trust deed is signed</p> <p>The fees are taken from the monies collected in by the trustee</p> <p>It would be unusual for a fee to be charged by an IP who subsequently became Trustee under a PTD.</p>	<p>If you apply to make yourself bankrupt, you will need to pay £150 before a bankruptcy order can be made. If you are applying through the minimal asset process this fee will be £50</p> <p>The Trustee dealing with the bankruptcy will charge a fee for their work</p> <p>These fees will be paid for from your assets if any and will be deducted from what is returned to creditors subject to the approval of the commissioner or the AiB (if there is no commissioner)</p>
<b>Who oversees the process?</b>	<p>The AiB is the scheme administrator</p>	<p>The trustee will be a qualified insolvency practitioner. The AiB has a supervisory role, for example the AiB may give directions to the trustee</p>	<p>A qualified insolvency practitioner may be appointed as the trustee or in the absence of one, the AiB will act as the trustee. The AiB, even if not the trustee will have a supervisory role</p>
<b>What happens to my assets?</b>	<p>You will retain control of your assets</p>	<p>All your asset that would have been available should you go bankrupt, will also be realised for the benefit of your creditors in your trust deed UNLESS you have set out in your trust deed that an asset is to be excluded (you will need to provide reasons for the non-realisation of assets)</p> <p>It is important to cooperate with the trustee. Failure to do so might lead to bankruptcy which may lead to assets that you had hoped to retain being realised in a bankruptcy</p>	<p>All of your assets apart from those specifically excluded in the legislation can be claimed for your estate by the Trustee. This does not include your income or assets required for essential living but if you can afford you will be expected to pay a DCO</p> <p>The trustee may sell these assets to raise money to repay your creditors</p>
<b>What happens to what I owe?</b>	<p>The DAS affects the debts that you owe when the procedure starts</p> <p>Once the DAS is successfully completed, you will no longer be considered to owe these debts</p>	<p>Trust deeds affect the debts that you owe on the signing of the trust deed</p> <p>Once you are discharged from the trust deed, you will no longer be considered to owe these debts</p>	<p>Bankruptcy affects the debts that you owe at the date:</p> <ul style="list-style-type: none"> <li>On a debtor's application for bankruptcy, the date on which the bankruptcy is awarded</li> <li>On a creditor's petition for bankruptcy, the date on which the sheriff granted the warrant to cite the debtor to appear before the sheriff</li> </ul> <p>Once you are discharged from bankruptcy, you, personally, will no longer be considered to owe these debts</p>
<b>How long does it last?</b>	<p>A debt payment programme under a DAS allows you to repay your debt over an extended period of time for any amount of money or for any reasonable length of time. Usually 4-8 years</p>	<p>A trust deed allows you to repay your debt over an extended period of time for any amount of money or for any reasonable length of time. Usually 4 years / 48 months</p>	<p>You will be subject to bankruptcy restrictions for one year</p> <p>Your bankruptcy term can be extended if for example, you are dishonest, have behaved recklessly, or if you do not cooperate with the trustee</p> <p>Although you are discharged after one year, the assets you had at the start of the bankruptcy will remain vested in the trustee (including those acquired during 48-month / 4 year period) and the trustee may continue to sell them to raise money to pay back your creditors</p> <p>Any DCO would also be payable for the whole 48-month / 4 year period</p>
<b>How else will I be affected?</b>	<p>A DAS will appear on your credit file for six years</p> <p>Your details will be put onto the DAS register which is available online for open access</p> <p>If you don't keep up your payments the DPP could fail and creditors can add interest and charges or take further action against you</p>	<p>Trust deed will stay on your credit history for six years after the procedure starts</p> <p>Unless the terms of your Trust deed allow you may not be able to hold certain public office appointments or work in certain sectors for example Finance</p>	<p>Among other restrictions, while bankrupt you will not be able to act as a company director or borrow £2,000 without telling the lender you are bankrupt</p> <p>Your bankruptcy will stay on your credit history for six years after the procedure starts</p> <p>Your bankruptcy will be recorded on the Register of Insolvencies until trustee is discharged</p> <p>The trustee will investigate your financial affairs as part of their work</p>

## TYPES OF SOLUTION

# KEY TERMS EXPLAINED

There are lots of terms and phrases which are often used when talking about debt, which makes it all the more important to seek debt advice from a regulated and impartial source who can help make sense of the options available. This section explains some of the key terms:

A person is **insolvent** if they cannot pay a debt when it falls due.

**The Accountant in Bankruptcy (AiB)** is an executive agency of the Scottish government responsible for administering the process of personal bankruptcy in Scotland.

**Arrears** describes payments that you have missed on your debts and household bills. Arrears can also include interest and charges that have been added.

**Priority debts** are debts that can cause serious problems if they are not dealt with, such as losing a home, or access to certain utilities. Creditors owed priority debts may also have powers to recover what they are owed. Priority debts include rent arrears, mortgage arrears, council tax arrears, and gas or electricity bills. While these debts may not be the largest debts, it is important to address these before other debts.

**Non-priority debts** are important to address after getting priority debts under control. They are referred to as non-priority debts because the problems they cause are considered less serious. However, those owed non-priority debts can still take action to collect payment which may result in you losing your home or other assets or being made bankrupt. Non-priority debts can include credit card or store card debts, overdrafts, catalogue debts, personal debts to family and friends, private parking tickets, payday loans, and business supplier debts if you have traded.

A **creditor** is a person or company that is owed money. Creditors can include, but are not limited to, banks, finance companies, hire purchase companies, HMRC, trade suppliers, employees or other individuals. In insolvency procedures, creditors are paid according to a strict statutory order:

- **Secured creditors** are creditors who hold a security (such as a mortgage) on an asset and have the right to sell the asset to recover their

debt. The right of a creditor to do this is not affected by insolvency. The secured creditor is the first to get paid when the asset is sold. If the secured creditor is owed more than the asset is sold for, any remaining balance will be treated as being unsecured.

- **Unsecured creditors** do not have security over their debts. Most creditors fall into this category.

**Surplus income** refers to the amount of money left every month after the payment of rent, mortgages, household bills, food and other essential spending.

**Equity** is the difference between how much your home is worth and the total amount owed on any mortgage and other lending that you have secured on it. If your home is worth more than your mortgage and secured lending, there will be equity. If the value of your property is less than the secured lending, there will be a shortfall or negative equity.

A **dependent** is an individual that relies on another person as a primary source of income. This could include children or elderly relatives.

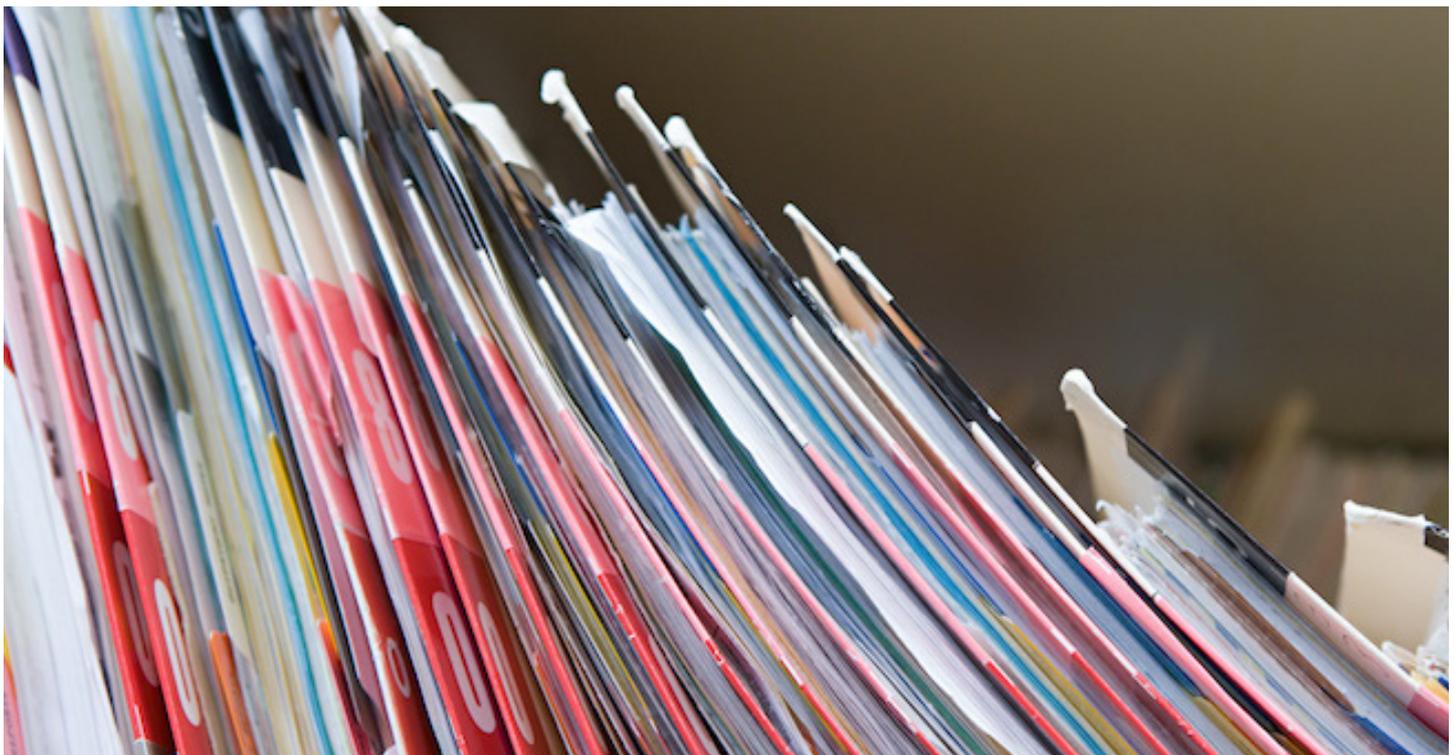
A licensed **insolvency practitioner** is a regulated individual who will oversee some statutory insolvency procedures, such as trust deeds or bankruptcy. In a bankruptcy, the insolvency practitioner will act as a **trustee**. The trustee's role is to identify and realise assets in order to pay the costs and liabilities of the bankruptcy in the prescribed order. For a Trust Deed, the trustee's is responsible for its administration.

A **decree** is one of the actions that creditors can take to recover debts they are owed. A decree is a formal declaration that a creditor is owed money, which is issued by a sheriff court. If the court issues a decree and you have been given time to pay, your creditor can take action to recover the money owed. The enforcement of debt following court action is called diligence.

A **statutory demand** is a written demand from a creditor to pay a debt within the given timeline (usually 21 days), either by repaying the debt or trying to come to an agreement with the creditor. If the statutory demand is not dealt with within the timescale specified, and the debt is over £5,000, the creditor is able to petition for bankruptcy.

A **bankruptcy petition** is a request put to the court by an individual's creditors to have that person made bankrupt. One or more creditors can petition for someone's bankruptcy if they are individually or jointly owed £5,000 or more.

**Credit rating** or **history** (also known as **credit score**) is a system used by lenders to assess how much of a risk it is to lend to an individual. Credit rating agencies will look at an individual's financial history, including records of missed payments or entry into an insolvency procedure.



# USEFUL CONTACTS

## SOURCES OF ADVICE

### R3

R3 is the trade association for the UK's insolvency, restructuring, advisory and turnaround professionals. R3's members have extensive experience of helping businesses and individuals in financial distress. Its members include insolvency practitioners, who are trained and licensed to give personal debt advice and administer statutory personal insolvency procedures.

[www.r3.org.uk](http://www.r3.org.uk)

### Insolvency Practitioners

An insolvency practitioner is an individual who is licensed and authorised to act in relation to insolvent individuals, partnerships or companies. Many insolvency practitioners will offer one hour of free advice. To find an insolvency practitioner who may be able to provide advice, please visit R3's website:

[www.r3.org.uk/get-advice/find-a-practitioner](http://www.r3.org.uk/get-advice/find-a-practitioner)

Or you can find an insolvency practitioner in your area by visiting:

[www.gov.uk/find-an-insolvency-practitioner](http://www.gov.uk/find-an-insolvency-practitioner)

### Citizens Advice Scotland

Citizens Advice Scotland can give face-to-face debt advice via local centres, by email and webchat.

[www.citizensadvice.org.uk/scotland/debt-and-money](http://www.citizensadvice.org.uk/scotland/debt-and-money)

### Debt Advice Foundation

Debt Advice Foundation is a registered national debt advice and education charity offering free, confidential support and advice to anyone worried about loans, credit and debt.

Tel: 0800 043 40 50

[www.debtadvicefoundation.org](http://www.debtadvicefoundation.org)

### Money Helper

Money Helper offers free and impartial money advice and was set up by the Government. It provides guidance across a wide range of money matters, including a number of useful tools and calculators to help people manage their money.

Tel: 0800 138 7777

[www.moneyhelper.org.uk](http://www.moneyhelper.org.uk)

### Money Advice Scotland

Money Advice Scotland is Scotland's money charity offering help to people in debt.

[www.moneyadvicescotland.org.uk](http://www.moneyadvicescotland.org.uk)

### National Debtline

National Debtline is a free and confidential debt advice service for people in England, Wales and Scotland, run by the Money Advice Trust. Business Debtline can help with debts relating to businesses.

Tel: 0808 808 4000

[www.nationaldebtline.org](http://www.nationaldebtline.org) or  
[www.businessdebtline.org](http://www.businessdebtline.org)

National Debtline produces a useful booklet, 'How to Deal with Debt', which contains a lot of helpful information about budgeting, maximising your income and managing your affairs. This can be downloaded here: [www.nationaldebtline.org/SiteCollectionDocuments/how-to-deal-with-debt.pdf](http://www.nationaldebtline.org/SiteCollectionDocuments/how-to-deal-with-debt.pdf)

### PayPlan

PayPlan offers free advice to anyone struggling with multiple debts.

Tel: 0800 280 2816

[www.payplan.com](http://www.payplan.com)

### StepChange Debt Charity

StepChange Debt Charity offers a wide range of debt solutions, to help you no matter what you're dealing with.

Tel: 0800 138 1111

[www.stepchange.org](http://www.stepchange.org)

# USEFUL CONTACTS

## HELP WITH MENTAL HEALTH

### Samaritans

The Samaritans provides confidential support for people experiencing feelings of distress or despair.

Tel: 116 123 (free 24-hour helpline)

[www.samaritans.org](http://www.samaritans.org)

### Mind

Mind promotes the views and needs of people with mental health problems.

Tel: 0300 123 3393 (Mon-Fri 9am to 5pm)

[www.mind.org.uk](http://www.mind.org.uk)

### Mental Health Foundation

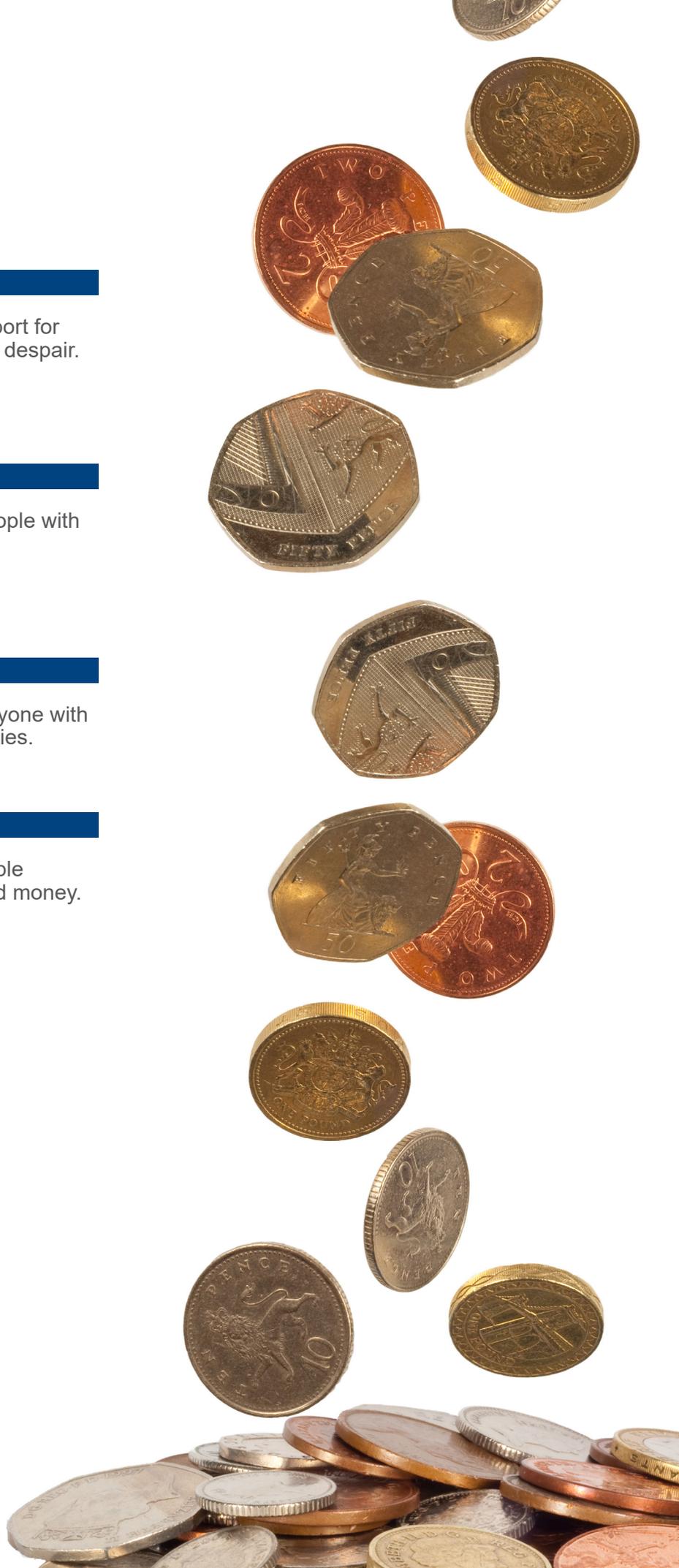
A source of information and support for anyone with mental health problems or learning difficulties.

[www.mentalhealth.org.uk](http://www.mentalhealth.org.uk)

### Mental Health and Money Advice

Clear practical advice and support for people experiencing issues with mental health and money.

[www.mentalhealthandmoneyadvice.org](http://www.mentalhealthandmoneyadvice.org)





This leaflet serves as a guide to the options and places you can go to for advice on personal debt issues. It is intended only to relate to Scotland. It is not a statement of the law or a substitute for specific professional or legal advice. We have made every effort to ensure that the guide is accurate, but R3 cannot accept any responsibility for the consequences of any action taken in reliance of its contents.

February 2023