

# MONEY

## ADVICE TRUST

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BUSINESS  
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Consultation Response:

# Ofwat Guidelines for water companies in supporting customers to pay their bill, access help and repay debts

Response by the Money Advice Trust

Date: July 2021

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# Introduction

## About the Money Advice Trust

The Money Advice Trust is a charity founded in 1991 to help people across the UK tackle their debts and manage their money with confidence.

The Trust's main activities are giving advice, supporting advisers and improving the UK's money and debt environment.

In 2020, our National Debtline and Business Debtline advisers provided help to 161,560 people by phone and webchat, with 1.86 million visits to our advice websites.

In addition to these frontline services, our Wiseradviser service provides training to free-to-client advice organisations across the UK and in 2020 we delivered this free training to over 920 organisations.

We use the intelligence and insight gained from these activities to improve the UK's money and debt environment by contributing to policy developments and public debate around these issues.

Find out more at [www.moneyadvicetrust.org](http://www.moneyadvicetrust.org)

## Public disclosure

Please note that we consent to public disclosure of this response.

# Executive summary

We welcome the Ofwat consultation on new guidelines for water companies to support people to pay their bills, access help and repay debts. We fully support the intentions behind the new guidelines using research with water customers to inform the proposals as well as the CCW recommendations.

We believe the guidelines do not strike quite the right balance, however, as there is the potential for water companies to interpret the guidelines as suggestions rather than requirements. If companies choose to adopt a “minimal compliance” approach rather than embracing the intention behind the guidelines, then it is questionable whether there will be sufficient protections put in place to support individual customers.

We are very pleased to see the recognition given in the paper to the guidance on Inclusive design principles that the Money Advice Trust published with the Fair by Design,<sup>1</sup> with Ofwat suggesting that companies can improve services by using our inclusive design guidance.

Ideally the Ofwat guidelines should align with the Ofgem “Ability to pay” principles that apply to energy firms.

Finally, we would like to take this opportunity to raise a fundamental problem with practices in the water industry in relation to debt enforcement. We are very concerned that water and energy firms continue to enforce county court judgments by using high court enforcement. This practice is disproportionate and undermines the intentions behind the Ofwat guidelines. We believe that Ofwat should review the practice of water companies resorting to high court enforcement to collect debts with the view to ending the practice altogether, or at the very least greatly enhancing the safeguards that must be in place before such action can be taken.

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<sup>1</sup> <https://www.moneyadvicetrust.org/latest-news/groundbreaking-guidance-launched-inclusive-design-essential-service-firms-and-regulators/>

# Responses to individual questions

**Question 1: Do our guidelines strike the right balance between offering sufficient protection and support for individual customers, while allowing companies flexibility to recover revenue for the benefit of all customers?**

We believe the guidelines do not strike quite the right balance, as there is the potential for water companies to interpret the guidelines as suggestions rather than requirements. If companies choose to adopt a “minimal compliance” approach rather than embracing the intention behind the guidelines, then it is questionable whether there will be sufficient protections put in place to support individual customers.

**Question 2: What impact do you think our guidelines will have on customer experiences in terms of payment, help and debt?**

We hope that the guidelines will have a positive impact on customer experiences, but this will only be effective if water companies are required to take action and implement the guidelines. In addition, there needs to be robust enforcement action taken by Ofwat and CC Water if these guidelines are not followed by individual firms.

## Question 3: Are the minimum service expectations set out in the guidelines appropriate? Do any need to be added, removed or changed?

We are concerned that the “minimum service” expectations seem to be worded in a way that is insufficiently prescriptive. Companies are encouraged to “consider” or “make efforts to” or “could”. We are not convinced that a company who considers a course of action, reviews its decision and then decides against making any changes, would be breaching the guidelines. For example, section 1.31 suggests that companies:

*“Consider a review of customer bill, payment, help and debt options and information based on 'Inclusive design in essential services' principles published by Fair by Design and the Money Advice Trust.”*

Whilst we are pleased to see inclusive design given this prominence, we are concerned that these expectations on companies are not sufficiently robust, and that it will be difficult for Ofwat to hold companies to account.

We welcome the new section 1.32 that states:

*“Use a consistent means of establishing customer's ability to pay.”*

However, we would like to see this guideline go further. As it stands, companies are only required to use a consistent means within that firm and says nothing about good practice on how this assessment should be made. This means that approaches could vary across the sector and lead to very different outcomes for vulnerable customers and people in debt.

We would argue that companies should use the same approach to working out affordability by adopting the MaPs Standard Financial Statement.<sup>2</sup> This would ensure people are treated fairly by water companies and that payments will be worked out consistently for people in multiple debt situations.

We note that this approach is set out later under 6.3 to 6.7 of the guidelines under the section on ability to pay. Perhaps this section needs setting out or referencing in section 1.32 as well.

We are pleased to see a new section 2.14 that requires firms to:

*“Tailor your debt management actions to be sensitive to the circumstances that make customers vulnerable.”*

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<sup>2</sup> <https://sfs.moneyadviceservice.org.uk/en/what-is-the-standard-financial-statement>

We are also pleased to see the whole of section 4 “Be proactive in contacting customers in debt” and section 5 “Be clear, courteous and non-threatening to customers in debt.”

We would suggest that section 4.8 needs rewording.

*“In a water company’s first written or oral communication with a customer, the company should send a statement that free debt counselling, debt adjusting and credit information services are available to customers and that the customer can find out more by contacting the Money Advice Service; and on its website provide a link to the Money Advice Service website – and it’s money navigator tool. Signposting to another free debt advice organisation is also acceptable.”*

The wording “free debt counselling, debt adjusting and credit information services” is the formal wording used by the FCA for its authorisation process. It would not be helpful for firms to use this language in any communications. We would favour “free debt advice”.

In addition, the Money Advice Service has now rebranded as MoneyHelper.<sup>3</sup>

We support the intention behind the requirement under 4.3 to:

*“4.3 Proactively offer customers who are in debt and in receipt of eligible benefits the option to pay using the ‘Water Direct’ scheme.”*

However, given the way in which the water direct scheme works, the requirement to pay the current ongoing water bill from benefit as well as a set amount off the arrears could cause hardship for people who are on very limited benefit income, subject to the benefit cap or the two-child limit. It is important that water companies do not offer this as the solution to all payment and affordability problems. There should be consideration given to whether water direct is always the best option, and whether a trust fund or debt matching scheme, or a combined approach would be more suitable for some customers in hardship.

We are pleased to see that section 6 of the guidelines set out that companies should “agree payments that are right for each customer in debt”. It is vital that companies work out a repayment plan based upon the ability for the customer to pay and is therefore “right” for that customer rather than for the firm. We would like to see the guidelines set out a requirement for companies to stop setting arbitrary criteria for repayment periods based on time periods e.g. the debt must be cleared before the new billing year, or debts must be paid back within x number of years. Repayments must be affordable for someone to pay on their income and take account of their household expenses and reasonable living costs. This is why we support the use of the SFS to work out income and expenditure to ensure a realistic payment outcome for people in debt.

We are concerned that companies might rely too heavily on the suggestion in 6.13 that firms should try to agree a plan that will cover the current year’s water bill as well as an amount towards arrears.

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<sup>3</sup> [English \(moneyhelper.org.uk\)](https://www.moneyhelper.org.uk)

*“6.13 Try to agree an instalment plan with the customer at a level which recovers the level of the current year’s charges and wherever possible also pays towards the previous years’ arrears (accepting that in most cases payments received will be used to pay off the arrears). This is so that the level of debt does not get progressively worse.”*

This could be seen as too simplistic a message that rather contradicts the requirement to “set repayments levels that are realistic and sustainable”. Where people are in extreme financial difficulties, deficit budgets, and benefit level income, trying to set payments to cover the ongoing bill plus arrears may be too rigid an approach.

Finally, we would like to take this opportunity to raise a fundamental problem with practices in the water industry in relation to debt enforcement. We are very concerned that water and energy firms continue to enforce county court judgments by using high court enforcement. This practice is disproportionate and undermines the intentions behind the Ofwat guidelines. We believe that Ofwat should review the practice of water companies resorting to high court enforcement to collect debts with the view to ending the practice altogether, or at the very least greatly enhancing the safeguards that must be in place before such action can be taken.

We raised this issue most recently in our response to the Consumer Council for Water independent review of affordability support.<sup>4</sup>

*“We would suggest that debt collection methods and the use of High Court Enforcement Officers (HCEOs) to enforce judgments for energy and water arrears should be looked at again. We think it is poor practice for energy and water providers to use HCEOs as it adds complexity, unnecessary stress and excessive court costs and collection fees for consumers who are likely to be in particularly vulnerable circumstances.”*

- ✓ The use of the High Court for enforcement of judgments introduces an unmerited degree of complexity and formality into the enforcement process. The language and procedures of the High Court are both arcane and intimidating. In our experience, this has the effect of putting people off from engaging in the process. Furthermore, the application process for a stay of execution is time consuming, very difficult for people to understand and there are often delays with hearings. This contrasts with the simple, straightforward process of suspending a warrant in the County Court.
- ✓ The process in the High Court as it stands would be inaccessible to most of our clients who would be unable to deal with the application process, even though it uses form N245, the process is much more complicated and involves submitting an affidavit or statement of means, as well as drawing up your own order and serving it on all parties.

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[https://moneyadvicetrust.org/media/documents/MAT\\_response\\_to\\_the\\_CC\\_Water\\_affordability\\_call\\_for\\_evidence.pdf](https://moneyadvicetrust.org/media/documents/MAT_response_to_the_CC_Water_affordability_call_for_evidence.pdf)



- ✓ The activities of County Court enforcement agents rarely cause complaints. County Court enforcement agents are directly employed staff of Her Majesty's Courts and Tribunals Service results in few complaints issues in relation to entry, or disputes about payment arrangements. There is no financial incentive for a county court enforcement agent to act improperly or use aggressive tactics to recover their fees. The ability for people in debt to make applications to suspend warrants of control in the county court and to vary instalment orders is a crucial tool. There is a straightforward set scale of fees and a clear judicial process.
- ✓ Fees and charges are lower in the County Court. Using High Court enforcement results in further costs for people already in financial difficulty. The two enforcement stages in the fee scale for High Court enforcement will in many cases be capable of adding a greater amount in charges than was originally owed. Additional fees can be charged at 7.5% of the amount owed above £1,000.
- ✓ Our advisers frequently report that HCEO fees and charges cause debts to escalate disproportionately. Furthermore, it is very difficult to challenge HCEOs over their fees. This is a very common complaint amongst both clients and advisers. There is no simple, easily accessible and cheap mechanism for complaints about fees. The High Court Enforcement Officers Association will not generally deal with fee-related complaints. This means that the only avenue for our clients is an obscure and costly court process. Clients are often reluctant to take further action to recover overcharged fees due to the difficulties in doing so.
- ✓ There is also a great deal of uncertainty about VAT rules. Until this is resolved, some high court enforcement firms are continuing to add VAT to fees, with no clear mechanism for challenging this. We would argue that this places a very much increased financial burden on the person in debt and is not supportable. This is only now being challenged in the courts.<sup>5</sup>

We welcome the new sections in the draft guidelines in sections 5.12, 5.13 and 5.14 set out below. However, these provisions do not go far enough.

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<sup>5</sup> Castle Water Ltd v DrunchSW3 Ltd

## Use enforcement action as a last resort

**NEW**

5.12 Use enforcement action as a last resort, once all other options for repayment have been exhausted

5.13 Any enforcement action taken or charges added should be proportionate and reasonable in relation to the circumstances of the customer and the size of the debt.

**NEW**

5.14 Exclude customers known to be in vulnerable circumstances from any form of enforcement action where appropriate

We see many cases at National Debtline and Business Debtline where our vulnerable clients in debt are being pursued by HCEOs to recover water and energy county court judgments.

### August 2020 case report

*“Client had visit from an HCEO for a water debt of more than £3,000. Although there had been no entry to premises or a controlled goods agreement (CGA) made, the agent was threatening to force entry and instruct the police if client did not agree to a CGA. They threatened to increase the fee by a further £594. The HCEO was aware that the client has informed their firm of their vulnerability in writing and also that the client is applying to a trust fund for help. The HCEO noted that the client’s car has a blue disabled badge prominently positioned.”*

### February 2021 case report

*“I have had a client today who has been visited by an enforcement firm acting in a HCEO capacity collecting a water debt. They have been made aware of client’s vulnerabilities but still insisted they will be attending today at 4pm to break entry and remove goods if the debt is not paid.”*

We welcome the intention behind section 5.14 to exclude people in vulnerable circumstances from “*any form of enforcement action*” but this is not happening in practice. If safeguards have been put in place by water companies, then they are not working for our clients.

The requirement in section 5.13 to ensure “*charges added should be proportionate and reasonable*” should rule out resorting to high court enforcement, where charges are set by regulation and escalate rapidly as stated above.

## Question 4: How can we encourage consistency of approach across the sector?

As we have suggested in our response to question 3, we believe that Ofwat should consider strengthening the guidelines to be more prescriptive. This could enhance the likelihood of there being a consistency of approach across the sector when it comes to measuring outcomes for customers.

## Question 5: Our expectations for companies to 'Show customers how their views on billing, payment and support are encouraging improvements to services' (see expectations 1.24 to 1.30) include companies reporting on the findings of their customer research. We would welcome views on whether this is appropriate – and (if so) the format and frequency.

It should be standard for companies to research the views of their customers to improve services. We are pleased to see this provision included in the draft guidelines. We welcome the requirement to focus on the *“most vulnerable and most in need of support”*.

It makes sense for this review to be conducted at least yearly, for the research findings to be published and that the report should inform the CCW annual review of that company's debt practices.

Question 6: We have had feedback and received customer testimonies that companies can sometimes quickly move from payment prompts to debt recovery action. Should companies give three prompts rather than two (see expectation 4.9) for customers to contact their company? We would also welcome views on whether companies should send prompts by different means to avoid errors in contact details causing customers to fall into debt unnecessarily.

We would support any measures to prevent companies from moving too quickly to debt recovery action. We would certainly support moving to three or more prompts before companies begin debt recovery action. These prompts should be sent by a variety of different contact methods as part of the standard procedure for companies.

The suggestions in the guidelines on form and content of communications should help customers to engage. However, we would like to see a set of standard communications in plain English that set out what good practice looks like. This should apply consistently across all companies e.g. to include standard phrasing for how to refer to debt advice, and setting out debt recovery options without being “*oppressive, misleading or threatening*”. We are concerned that too often debt recovery communications are designed to scare people into responding by setting out what could happen as a consequence of non-payment. Such techniques can of course have the opposite effect of scaring the most vulnerable people in debt and prompting them to hide instead of responding.

For more information on our response, please contact:

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