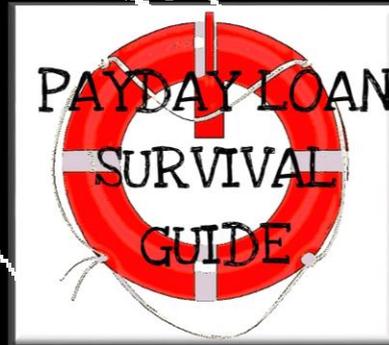
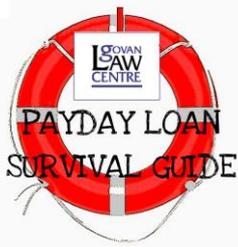


# Breaking free from payday loan debt





**PAYDAY LOANS** are short-term or emergency loans, but if you are using them regularly to make ends meet you may quickly end up in a spiral of unmanageable debt. For example, borrowing four £300 payday loans for just one month will cost around £500, and if you are rolling over such loans month after month, the chances are you can't afford to pay them back.

This *Payday Loan Survival Guide* from Govan Law Centre explains **how you can break free from payday lending debts, and take control of your money and life. It applies across the UK.** There is no magical wand but you do have important legal rights. There are a few simple steps you can consider taking right now to regain control of your finances and improve your quality of life.

**If you cannot afford to pay back your loan(s) on time, this guide will explain how to:**

1. **Stop the payday lender taking money from your account**
2. **Challenge interest and charges where possible**
3. **Manage the debt on an affordable basis**
4. **Access fairer forms of credit**

### **1. Stop the payday lender taking money from your account**

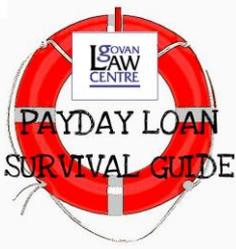
If you cannot afford to pay your loan(s) you don't want to be left without money to pay your rent or mortgage – which are 'priority debts' – or cash to buy food. You also don't want to have insufficient funds in your bank account for utility direct debits or standing orders which may result in bank charges or failed item fees, leaving you with even less money to live on each month.

**You are entitled to instruct your bank or card provider to cancel a payday lender's right to take money out of your bank account.** If you have given the long number of your debit or credit card to a payday lender it will take money from your account using a '*Continuous Payment Authority*' (CPA). You need to cancel individual CPAs for each different payday lender if you have multiple loans.

The UK financial regulator (the **Financial Conduct Authority**) has made it crystal clear you have the right to cancel a CPA by asking your bank or card provider to do so.<sup>1</sup> **You can telephone your bank to do this, or go into your local branch. You must do this at least the day before the payment is due to come out of your account.**

You **do not need** your lender's permission to cancel a CPA. However, if you can, e-mail them to say you've cancelled the CPA because of financial hardship. This should avoid any default charge(s).

<sup>1</sup> <http://www.fca.org.uk/news/continuous-payment-authorities-your-right-to-cancel>



Keep a note of the date and time you asked the bank to cancel the CPA, and if the money still comes out of your account, the Financial Conduct Authority (FCA) has stated that **your bank must refund you this money immediately**. If a payday lender still takes money from your account after you have cancelled the CPA, you should make a complaint to your bank for an immediate refund.

The fastest way to do this is to telephone your bank, but you may be able to e-mail, go into a local branch or write a letter to complain. If you do not get an immediate refund visit the **Financial Ombudsman Service (FOS)** website to see how you can make an Ombudsman complaint: <http://www.financial-ombudsman.org.uk/consumer/complaints.htm>

**Canceling a CPA only turns off the tap between your bank account and a payday lender – you still owe the debt.** The next sections of this guide explain how you can manage outstanding loan(s).

## 2. Challenge interest and charges where possible

In March 2013, the **Office of Fair Trading** found that there was widespread failure amongst payday lenders to comply with consumer credit law and guidance.<sup>2</sup> Lenders often failed to provide customers with pre-contractual information and explanations on the costs and risks of taking out a loan; the majority of lenders were not carrying out proper affordability assessments, and many were promoting rollovers when borrowers needed repayment plans and forbearance because of financial hardship.

If your payday lender has not complied with consumer credit law requirements and you are experiencing financial hardship, **you may wish to argue that you have not been treated fairly and have in effect been missold the payday loan and/or rollovers.** The objective is to try and write off as much interest and charges as possible to minimise your debt.

**To do this you will need to make a complaint to your payday lender.** It is always best to do this in writing and keep a copy of your letter of complaint. You may wish to e-mail this to your lender's customer service department; alternatively you can send a letter by post. Google the name of your payday loan company to find their website, and then look up their 'Contact us' details.

**Your e-mail/letter of complaint will need to explain why you think you have been treated unfairly as well as explaining how the loans have resulted in financial hardship.** We have set out a number of possible grounds of complaint you may wish to use in your complaint e-mail/letter, where these are applicable to your own personal circumstances.

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<sup>2</sup> [http://www.offt.gov.uk/shared\\_offt/Credit/oft1481.pdf](http://www.offt.gov.uk/shared_offt/Credit/oft1481.pdf)

## **MENU OF POSSIBLE GROUNDS OF COMPLAINT**

- *Were you made aware of the 'Representative APR' (the cost of interest and other mandatory charges) on the advert/website where you took out the loan?, if not you might be able to say:*
  - "When I took out my payday loan the Representative APR and true costs of the borrowing was not made clear to me on your website and advertising. This was unfair and contrary to the Advertising Regulations and the Consumer Protection from Unfair Trading Regulations".
  
- *Did you receive 'Pre-contractual Credit Information' which clearly set out all costs (interest and charges) and in particular the consequences of missing a payment including default charges?, if not you might be able to say:*
  - "Your company failed to provide me with the proper statutory pre-contractual information before I entered into the loan – including a clear explanation of the consequences of missing a payment, default and rollover charge. Had I known this, I would not have taken out the payday loan and suffered financial hardship".
  
- *Did you receive 'Pre-contractual explanation' which clearly explained how the payday loan may be unsuitable for particular types of use, or have adverse impacts, with a meaningful explanation on how much you had to pay and the consequences if you failed to repay on time?, if not you might be able to say:*
  - "Your company failed to provide me with adequate pre-contractual explanations on the suitability of payday loans in relation to particular types of use, and how much I would really have to pay and what would happen to me if I was unable to do so. Because of this failure, I have been significantly prejudiced and have suffered loss & hardship."
  
- *When you first took out your loan, did your payday lender undertake a proper assessment of your ability to afford and pay back the sum borrowed?, if not you might be able to say:*
  - "Your company failed to properly assess my creditworthiness when you first lent me money contrary to section 55B of the Consumer Credit Act 1974. Had you undertaken a sufficient assessment I would not have incurred additional interest and default charges."
  
- *When you rolled-over your loan(s) did your payday lender undertake a proper assessment of your ability to afford and pay back the rollover sum borrowed?, if not you might be able to say:*

- “Your company failed to properly assess my creditworthiness when you lent me money and failed to carry out affordability checks when you rolled-over and modified my loans, all contrary to section 55B of the Consumer Credit Act 1974. Had you undertaken a sufficient assessment I would not have incurred additional interest and default charges.”

**Below is an example letter of complaint you may wish to adapt and use to challenge interest and charges.**

### **EXAMPLE LETTER OF COMPLAINT**

INSERT DATE

Dear Sir/Madam

[INSERT YOUR NAME AND ADDRESS]; payday loan reference number [INSERT YOUR LOAN NO OR REFERENCE]

I have a payday loan agreement with your company and wish to make a complaint in relation to the product you sold me. Your product has resulted in me suffering serious financial hardship and becoming unfairly indebted. In particular, [INSERT IN YOUR OWN WORDS THE IMPACT THE DEBT IS HAVING ON YOU, AND OTHER MEMBERS OF YOUR HOUSEHOLD e.g. the impact on your ability to pay rent/mortgage; are you missing other priority bills, incurring bank charges, not having enough money for food, clothes and basic essentials? etc.,]

I would not have suffered such detriment had your company complied with the relevant consumer credit laws in relation to my individual circumstances; in particular I believe: **INSERT ONE OR MORE OF THE GROUNDS FROM THE MENU ABOVE WHICH APPLY TO YOU**

I would ask you to write-off the interest and charges you have applied to my loan. If you are not prepared to do so please explain why, within the statutory 8-week period, so I can take my complaint to the Financial Ombudsman Service. Meantime as this debt is in dispute please desist from debt collection or contacting me until this dispute is concluded.

Yours sincerely

INSERT YOUR FULL NAME

### What happens next?

Your payday lender has 8 weeks to respond to your complaint. If they reject your complaint, don't resolve it fairly, or fail to respond 8 weeks after you sent it, you can make a written complaint to the Financial Ombudsman Service (FOS). FOS has the power to determine your complaint, issues directions to the lender, and make a compensatory award.

The FOS has a website which explains how to download and fill in their complaint form, please visit:

<http://www.financial-ombudsman.org.uk/consumer/complaints.htm>

You can telephone the FOS consumer helpline for advice on complaining on **0300 1239 123** or **0800 023 4567**. The helpline is open Monday to Friday 8am to 8pm, and on Saturday from 9am to 1pm. If you don't have a lot of credit in your phone they will be happy to phone you back.

Even if you can get a lot of interest and charges written off with a successful complaint the chances are you will still have some money (the original sums you borrowed) to repay. **You must not ignore this debt as it won't go away, and it is best to sort it out now.** The best way to deal with this debt is dealt with in the next section of this guide.

### 3. Manage the debt on an affordable basis

If you are already in serious financial difficulty with your loans you may have already been hounded with telephone calls, e-mails and texts asking you to make payments, with the threat of legal action. **The best way to stop this is to get a free independent advisor to act on your behalf to negotiate a repayment plan.**

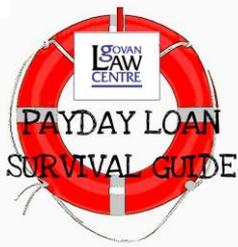
The Office of Fair Trading (OFT) **Debt Collection Guidance**<sup>3</sup> makes it clear that payday lenders should engage with a consumer's advisor. **It is an 'unfair or improper practice' for the lender to contact the debtor directly where they have an appointed advisor.**<sup>4</sup> In other words, if you get a free advisor to help work out a repayment plan, you can avoid being harassed by your creditors.

The OFT's Guidance requires payday lenders to give you adequate time to repay any debt (this is known as 'forbearance'): "*We would expect businesses*

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<sup>3</sup> [http://www.offt.gov.uk/shared\\_offt/business\\_leaflets/consumer\\_credit/OFT664Rev.pdf](http://www.offt.gov.uk/shared_offt/business_leaflets/consumer_credit/OFT664Rev.pdf)

<sup>4</sup> Page 26 of the OFT Debt Collection Guidance (link above).



*to work with debtors with a view to providing them with reasonable time and opportunity to repay debts and, where appropriate, to signpost them to sources of free independent debt advice”.<sup>5</sup>*

### **Where can I get free debt advice and representation?**

You can get free face-to-face advice from a local advice agency such as a law centre, citizens advice bureaux, money advice agency or local council money advice service. Your local council will have details of reliable and free local agencies in your area so contact them. Remember you don't have to pay for debt advice in the UK.

Alternatively, if you want free debt advice and help over the telephone visit the **Money Advice Service** for a listing of national agencies in the UK:

<https://www.moneyadviceservice.org.uk/en/articles/where-to-go-to-get-free-debt-advice>

Free online help with budgeting is available from the Money Advice Service here:

<https://www.moneyadviceservice.org.uk/en/categories/managing-your-money>

**Please remember, if you take action or get help now it will give you peace of mind, and it is always easier to sort out money problems sooner rather than later. No-one will judge you; everyone gets into difficulties in life.**

#### **4. Access fairer forms of credit**

Borrowing money from a payday lender is really expensive, so thinking ahead, you would be much better off borrowing money from someone who charges less. You can get good online self-help information on accessing fairer forms of credit and managing debt from **Money Saving Expert** here:

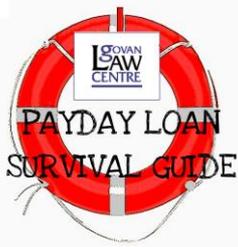
<http://www.moneysavingexpert.com/loans/debt-help-plan>

This link also provides details of how to check for grants and support from utility companies.

The problem with accessing cheap credit is unless you have a good credit rating it's unlikely you will be able to access this. **However, once you get back on your feet you might want to think about joining a local credit union.** They lend money on an affordable basis and can help you manage your money on a sustainable basis.

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<sup>5</sup> Page 8 of the OFT Debt Collection Guidance (link at footnote 3, above).



**You can find a local credit union here:**

<http://www.findyourcreditunion.co.uk/home>

If you are in receipt of certain welfare benefits you may be able to access a Budgeting Loan – if you are in England, Wales or Northern Ireland see here:

<https://www.gov.uk/budgeting-loans/overview>

If you are in Scotland, you may be able to access a non-repayable grant from the Scottish Welfare Fund, which is mainly for people in receipt of welfare benefits, see here:

<http://www.scotland.gov.uk/Topics/People/welfarereform/scottishwelfarefund/howtoapplytothescottishwelfarefund>

**Disclaimer:** please note this document is an illustrative guide only and is not legal advice. You should obtain your own independent legal advice. A local advice agency or law centre may be able to advise and represent you for free, if not you may be able to get free help from a local solicitor under the legal aid schemes.

This guide was written by Mike Dailly, Principal Solicitor, Govan Law Centre, Glasgow, UK, 14 July 2013.

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