



HOUSING ADVISORY SERVICE

WHAT YOU CAN DO ABOUT YOUR MORTGAGE ARREARS

Many different changes in circumstances can lead to less money being available in the household budget for essential bills, for example, redundancy, relationship breakdown, or illness in the family.

TIPS FOR NEGOTIATING WITH YOUR LENDER.

In order to negotiate with your lender, you will need to both organise all your facts, and understand what possible options you have. You can then start to discuss your situation.

- Make contact with your lender as soon as you know you will be having problems making regular payments.
- Send them a short letter explaining that you are aware of the problem and will get back in touch as soon as you can with proposals to clear the arrears.
- Draw up a Financial Statement reflecting your current Income and Expenditure.
- Talk to your lender again.

When approaching your lender with your proposals, you can either do this in person or in writing. It may be a good idea for you to put your ideas in writing, asking at the end of the letter for an appointment to come in and discuss them with your lender face-to-face. This way, your lender will have had a chance to look into your proposals (especially if they involve projected calculations) before you meet to discuss them.

If, at any time when talking to your lender, you agree something by phone, remember to **back this up in writing** to your lender confirming what was agreed, and to keep a copy safely.

Whilst you negotiate, it is important to **pay what you can** in the meantime and to be as consistent as possible in making payments regularly. The reason for this is that if your lender ever goes to court to seek possession, your payment 'history' will be looked at carefully, and may be the cause of an offer being agreed or not by the court.

Only ever make an offer that you know you will be able to pay. It is very easy to be over-optimistic when dealing with your lender, but it is much more important to be realistic. The offer you make, will have to be paid on a month by month basis, and you do not want the agreement to have to be varied only a couple of months after it was first agreed, only because you realise later you have not allowed enough for your household expenses. This is why any offer made should



HOUSING ADVISORY SERVICE

be backed up by a Financial Statement, so that everyone involved can see clearly you can afford it.

If your lender does not agree with your offer initially, point out to them that an offer made subject to a detailed Financial Statement is in both of your best interests, as you are most likely to be able to keep to it. If you need to, present the offer again, to a person who is senior to the one you were dealing with, or at the Head Office. You can continue with this strategy right up to the level of the Chief Executive if necessary.

All building societies and banks have **internal complaints procedures**, and if acceptance has still not been achieved for what you believe is a reasonable offer/proposal **and** mal-administration may be involved, you can also direct your complaint to the Building Societies/Banking Ombudsmen.

Whilst you are negotiating, it is good practise to **start paying the amount you have offered**, if your offer concerns money, rather than a re-negotiation of your mortgage terms.

Once an offer has been agreed, try to **stick to it and pay on time**. As already mentioned, if your case does go to court this will be taken into account. Any offer will normally always only be accepted for a period of 3-6 months, and will be reviewed after this time.

However, if you are experiencing real difficulties or your circumstances change again after your offer has been accepted, you should inform your lender of this, and **re-negotiate your offer** on the basis of a new Financial Statement.

Remember that it is never too late to contact your lenders about your arrears, if you have a proposal for clearing your arrears within a 'reasonable time', right up to the time of a Possession Warrant being granted. A '**reasonable time**' is defined in case law as up to the lifetime of the mortgage, for most mortgages.

If it is **impossible to reach an agreement** with your lender, and they simply proceed to court, bear in mind that you will be able to explain to the court the extent of your negotiations. You may then find that the offer you were putting forward to your lender is agreed by the court as acceptable. But you will want to be able to show evidence to the court of when and how often you contacted your lender, so remember to keep copies of all correspondence for this purpose.



HOUSING ADVISORY SERVICE

The Council of Mortgage Lenders have a '**Mortgage Code**', and a '**Code on the Handling of Arrears and Possession**', which all their members subscribe to. It states that:

- 'we will consider cases of financial difficulty and mortgage arrears sympathetically and positively.'
- 'We will do all we can to help you to overcome your difficulties.... possession of your property will be sought only as a last resort when attempts to reach alternative arrangements with you have been unsuccessful.'

Copies of both of these documents can be requested from the Council of Mortgage Lenders, whose address is at the back of this pack. They can be useful as a negotiating tool, if your building society will not agree to a strategy which appears as an option in one of these documents.

THINGS TO CHECK.

- benefit receipt.
- claim on any Mortgage Protection Policy you may have.
- check the value of your home.
- claim Income Support housing costs (more about this further on).

OPTIONS FOR CLEARING YOUR ARREARS.

Your choice of action will depend on

- how the arrears arose in the first place
- how short or long term the remedy needs to be
- whether your lender has taken action in court yet, and lastly
- what kind and how many mortgages you have.
- how much available income you have

Some of the options outlined here will also help you reduce your future mortgage costs as well.

WHICH OPTIONS FOR WHICH SITUATION?

OPTIONS FOR REPAYMENT MORTGAGE.

There is a list of possible courses of action below.

You may find that you can use more than one option at any one time.

Or it may be the case that your particular circumstances mean only one option is applicable to you, and for a limited time only.



HOUSING ADVISORY SERVICE

- pay mortgage interest only.

This can have short-term and long-term possibilities. Some lenders are prepared to allow borrowers to set aside capital payments for quite long periods, either as a separate arrangement, or after the surrender of an endowment and change to a repayment mortgage.

- extend the term of your mortgage 'life'.

When you took out your mortgage, the loan agreement was probably made for a period of 20 - 25 years. If you have been paying it off for a number of years, you can go to your lender and ask them to extend your mortgage, which means that your repayments will be lower and more affordable. Some lenders will extend terms up to 35 years. Your lender will check though that you will be able to meet the new repayment.

- capitalise the arrears on your mortgage.

If you have built up substantial arrears, but can otherwise meet your mortgage payment, this would be a good option to consider. It will have the effect of increasing your monthly payment, in line with the amount of capital you are adding, but will clear your arrears in one go. Sometimes you can look at this option alongside the possibility of extending the mortgage term, which will mean your arrears are paid off, but your monthly payment does not rise, and may in fact fall.

- a period of reduced/non-payment of instalments to cover a short period of reduced income.

If you are, for example, off work and without access to more than basic sick pay for a limited period, your lender may be persuaded to accept non-payment during such a period, but normally only in a situation where they know you will be going back to your employment at a confirmed time.

- paying off an increased amount (on top of your normal monthly repayment) for a certain period of time.

If your Financial Statement allows for this, you will be able to clear your arrears in full. This option will depend entirely on what extra income you have available to put into your mortgage.

OPTIONS FOR ENDOWMENT MORTGAGE.

In general, an endowment mortgage is less flexible than a repayment mortgage, and there are therefore less options available to help you through a period of arrears.



HOUSING ADVISORY SERVICE

- change to a repayment mortgage and surrender your endowment policy. This is a major step to take and should not be undertaken without independent financial advice. However, if you are considering this step due to the fact that you are in arrears, it is unlikely that you will be able to afford to pay an Independent Financial Adviser. As much information is included below as possible.

The first step that you need to take is to gather two pieces of information.

First, you must find out what the '**surrender value**' of your endowment policy is. If you have had it for longer than two years, there may be some value in it, but it is unusual to get back what you have paid in, if you are cashing it in early.

Second, you must ask your lender to give you a quote to assess what your mortgage payments would be under a repayment mortgage. You may find that the endowment policy has been '**assigned**' to your lender. This means that you must get their agreement before the endowment policy will be surrendered by the insurance company. Also, the proceeds will pass directly to your lender. It is therefore important that you agree in advance with your lender, what will be done with the money. The bulk of the proceeds will normally go to pay off arrears. You can request that any remainder be used to pay off some monthly repayments, or be put towards the capital, thereby reducing your monthly payments.

Whilst you are negotiating the change in your mortgage, you will have a period during which you are paying interest only to your lender. Sometimes, lenders are happy to keep this arrangement going even after surrender of the endowment policy.

- reduce or stop interest payments to the lender and pay the endowment policy only.

This is a short-term measure. You would normally only consider this if your endowment policy has been running for many years, and it is therefore important that it does not lapse (as it will be your endowment policy that pays off your mortgage at the end of the day). If your income is reduced for a short period, you may choose to do this rather than meet only part of your mortgage interest payment and pay none of your endowment payment. The resulting arrears of mortgage interest can be dealt with in a number of ways - you may increase your payments for a few months, or ask your lender to capitalise the arrears.



HOUSING ADVISORY SERVICE

OPTIONS FOR SECURED LOANS.

- re-mortgaging your property.

This will involve extra expense due to legal and survey fees and is only a real option for you if you have no arrears on any mortgage/loan and where there is 'equity' in your property. You need to remember to watch out for being charged higher interest rates on any new loan. This may not be an option if you are on Income Support - see Income Support leaflet.

- further advance from first lender to pay off the lender of your secured loan.

It can be possible to negotiate this without having to pay any fees to solicitors or surveyors, which makes this option cheaper than a re-mortgage of your property. This may not be an option if you are on Income Support.

- applying to the County Court for a **Time Order**.

This is an option if you have received a Default Notice on your secured loan, and the loan itself was for £15,000 or less if you took it out before 1/5/98, £25,000 or less if you took it out on or after 1/5/98; it would then be regulated by the Consumer Credit Act 1974. This can be a very useful way to get an order of repayment agreed, especially if you have been negotiating with the lender of your secured loan, but have not been able to reach agreement with them, but will only cover a limited period of financial hardship and will only be considered by the District Judge if you have the potential means to continue to meet full payments in the future.

There are two ways to apply for a Time Order.

1. By applying direct to the County Court once you have received a default notice. The court fee should be waived if you explain that you are having financial difficulties, or are on benefits. This method of obtaining a Time Order has the advantage of not leading to you being registered on the Register of County Court Judgments.

2. If your creditor has already issued a summons for possession, you can apply to the County Court, or ask for a Time Order at the possession hearing. No fee is payable for this because it is not an 'originating application'.

At the hearing, the District Judge can allow you to pay lower instalments, can reduce the interest rate that you are being charged, freeze interest, reduce the total amount owed and make any other adjustments she/he sees fit. A Time Order can be made for either the arrears alone, or the loan repayments in total.

In order to come to a decision, your Financial Statement will be scrutinised. Your creditor does not necessarily have to agree with the order made - it is sufficient



HOUSING ADVISORY SERVICE

for the District Judge to see it as reasonable, and your creditor would then be bound to accept.

OPTIONS FOR LEASEHOLDERS.

Leaseholders have an added burden of needing to pay for service charges. The options as far as your mortgage are concerned if you are a leaseholder will depend upon whether your mortgage is a repayment or an endowment mortgage, and have already been outlined above. The options here refer only to arrears with service charges.

- your freeholder may accept increased payments as long as any arrears are paid off within 12 months.
- if your arrears relate to major works bills, then either you or your freeholder, can request that your lender meet the bill and add the balance to your mortgage capital.

If you require advice beyond the actual paying of any bills, you should seek specialist advice.

OPTIONS FOR SHARED OWNERSHIP.

- rent free period.
- ask lender to pay arrears of rent and add the amount to the mortgage capital.
- ask the lender to capitalise directly any arrears on the mortgage.
- discuss your difficulties directly with your landlord (usually a Housing Association) as soon as you can. This is important, not only because they may be able to help during any period of rent arrears, but also because they may have rescue schemes of their own, for example, you may be able to purchase a smaller share of a different property. It is also wise because any arrears details of either rent or mortgage will usually be communicated between landlord and lender.

OTHER GENERAL OPTIONS.

Handing in Keys.

There are very few situations where handing in your keys is a good idea. Even if you do decide that this is what you want to do, your loan will continue to run and accrue interest after you have left the property. This will remain the case until the property has been sold and the loan paid off from the proceeds, and you will find that all costs of the sale will be added onto the loan as well.

If you have 'negative equity' (your property is worth less than the loan/s on it), the original loan will not be paid off. Your lender will continue to charge interest to



HOUSING ADVISORY SERVICE

your account and you will need to make an arrangement for payment as soon as possible.

Also, as you have voluntarily given up your home, your name will be held on the possessions register, along with people who have lost possession through court order. This means that you will have problems in the future obtaining credit, and if you try, also with getting another mortgage.

As well as credit problems, if you will be seeking accommodation from your local authority as a homeless person, you will find that you run the risk of being found to be 'intentionally homeless', and may not be given help.

Mortgage Rescue Schemes.

These schemes are run by Housing Associations, Local Authorities or your lender. One of these three will purchase your home and will rent it back to you so that you may remain there. Therefore, you would become a tenant, but the rent you pay would almost always be less than the amount of your mortgage payments. If the scheme is run by a Housing Association, you may find that they allow you to retain ownership of part of the property on a shared ownership basis; you would then rent the remainder from the Housing Association.

Mortgage rescue schemes in general are rare, but it is worth asking both your lender and local authority for more information of what is available in your area. Remember that if your home is purchased this way, but is worth less than the mortgage, then you will still have to come to an arrangement with your lender regarding the shortfall.

Moving Out and Taking in Tenants/Getting a Lodger.

This option is only possible if you have access to rent-free or low rent accommodation, for example, if you could stay with relatives or friends for a period of time, or you have empty rooms in your property.

You need to get agreement from your lender before renting out your home. Check your mortgage agreement for more information on this or contact your lender direct, and put this forward as an option to clear your arrears.

Your lender may impose commercial lending rates, if they agree to you taking in lodgers/renting your property.

The other problem is that, whilst renting your home out, you decide to sell it, you may be liable for Capital Gains Tax. Again, contact your local tax office if you think you may be in this situation.

If you are considering this move and are in receipt of Income Support, the rent you receive will be seen as income (but ignored up to the value of your mortgage



HOUSING ADVISORY SERVICE

repayments), and your home will be seen as capital, which may mean that your benefit reduces/ceases.

A better option may be to take in a **lodger**, if you have a spare room. The income you receive from this will be subject to Income Tax, and your Income Support will reduce as most of the rent will be seen as income - unless you have rented the room under the 'Rent a Room Scheme'. For more details contact your local authority. However, renting a room to someone as a **boarder** (meaning that you provide some meals) will be more advantageous if you are on Income Support, as less of the rent they pay you will be taken into account as income.

Finally, remember to check your insurance policy, and if you need to, contact your insurance company to let them know about who is living in your home.

Taking Out further Loans.

Adverts are often put in the local press, and newsagents windows, offering no strings attached loans. Avoid this method of borrowing. If you are already having trouble paying your mortgage, even if a further loan of this type would clear your arrears, you will have problems paying the mortgage and loan instalments together, and may then fall into arrears with two loans. Often the rates of interest of loans taken from so-called 'loan sharks' are very high, and you may be faced with a large and rising debt.

Selling Your Home.

There are only a few circumstances in which selling your home will put you in a better position. You may be able to sell, clear your existing mortgage and buy a smaller property in a cheaper area, and take out a smaller mortgage on this. This will only be the case if you do not have 'negative equity' on your existing home.

If you are thinking of selling up and moving into the private-rented sector, look carefully at what level of rents are charged in your area. Compare this to what your local Housing Benefits service would allow, if you will be claiming benefit. Ask them to do what is called a **Pre-Tenancy Determination**, a decision on how much of the rent on a property will be allowed, once you have found somewhere suitable. This will effect whether it is a good option for you or not.

As with handing in keys, if you will need to make a homelessness application to your local authority, then you risk being seen as making yourself 'intentionally homeless', and may not be given help.

Making a Charity Application.



HOUSING ADVISORY SERVICE

Always consider this as an option if you are on a limited income. Most local reference libraries stock a book named '**A Guide to Grants for Individuals in Need**'. Consult this and try to match yourself to a number of charities whose criteria you meet. Some do have a policy not to provide grants to cover arrears, but your own circumstances, for example, if you recently became disabled, may outweigh this.

Also, many of the occupational/service charities will not exclude payments for arrears, so if you did a particular job or used to be in one of the services, apply to these specific organisations. If this contact needs to be made via a Social Worker/Welfare Rights Unit/CAB, then you will need to be referred by them. Contact one of the above and make an appointment.

Tax Rebate.

You may have had a change in circumstances, for example you or your partner have recently left work, or you may have had many changes in tax code in the last tax year. In any case it is always worth asking your tax office to check whether you have the correct tax code, and to claim a rebate. This could then be used as a lump sum payment towards your mortgage arrears.

If you do claim and receive a tax rebate and wish to use it to pay off arrears, be careful that your lender does actually use it for the purpose that you request, for example that it is used for payments in advance if you have an immediate difficulty in paying, or is used to pay off capital.

WHAT YOU CAN DO ONCE COURT ACTION HAS STARTED.

It is never too late to start to negotiate with your lender. **This is a golden rule.**

The first legal notice you will receive regarding your mortgage will be a **possession summons**.

As well as stating a date for a possession hearing at the local County Court (in London this could be the High Court), there will be attached to the summons a '**Particulars of Claim**' document. It is important to scrutinise the information contained in the Particulars of Claim, as, unless the case is being heard in the High Court in London, it must comply with the list below:

- a redemption figure for your mortgage (what it would cost you to pay off the loan)
- an account statement indicating what was due and what you paid.
- separate details of the arrears isolated from all other charges.
- a breakdown of how your monthly payment is made up.



HOUSING ADVISORY SERVICE

- a list of interest rates used when the loan was first taken out, at the time directly before arrears accrued, and at the point possession was applied for.
- some information about your lender's knowledge of your financial situation.
- details of the steps your lender has taken to recover the arrears.

Read this carefully. If any of the information is incorrect, you must challenge it, and at court if the details have still not been provided correctly, this may be cause for an adjournment.

Once you have read through what your lender is claiming, you will have to put forward your own details.

This is done on the '**Form of Reply**', which is enclosed with the summons and Particulars of Claim. This must be returned to court within 14 days.

There are 3 sections to the Form of Reply.

The **first** involves what the lender is claiming - this is your opportunity to question what your lender has put in the Particulars of Claim. You can also give details of offers you have made/tried to make to your lender, including what you can currently offer to them.

The **second** section requests details of your income and expenditure, benefit receipt, and other debts.

The **third** section asks you to explain why you have got into arrears and whether you have any alternative accommodation available to you - it is important here to explain any special reasons you may have for remaining in your home, so that the court has a full picture of what your situation is. (If a Possession Order is granted, the comments you make here, will effect how much time you have before the Possession Order takes effect.)

If you have a proposal to make to your lender, put it to them both personally, and via the Form of Reply. You could use a new offer as a basis upon which to ask for an **adjournment**, for example, for six months whilst you make the payments indicated in your offer.

There are 2 ways in which you can ask for an adjournment:

- by requesting it on the Form of Reply.
- by asking the lender/lender's solicitor, to adjourn the case.

Bear in mind though that any extra costs that your lender incurs through adjournment will probably be met by you (they will be added onto the amount owing on your mortgage).



HOUSING ADVISORY SERVICE

THE COURT HEARING.

The following are some useful points to guide you through the court process:

- Always attend the court hearing, even if you have already come to an arrangement with your lender.
- The hearing itself will usually take place in the District Judge's 'chambers', and is often over very quickly.
- If you are representing yourself, and as your lender will have a solicitor acting on their behalf, the District Judge will often take account of this, and should not allow you to feel drowned in legal 'jargon'.
- Whatever your offer to the lender, try to present this clearly.
- Generally, the court will be more interested in what you are now able to do to clear the arrears, than how you got into arrears in the first place.
- The court will also want some assurance that you will be able to keep to the arrangement you are proposing.
- It is a good idea to write down what you want to say, because you do not want to recall an important point after you have completed the hearing.
- The District Judge will first of all check that all the details on the Particulars of Claim are correct.
- Then your lenders will be asked by the judge to state whether any payments have been received since the summons was issued, and what orders they are seeking from the court. They will present their case.
- You will then have an opportunity to state whether you dispute anything the lender states. The judge will ask you what proposals you have to repay the arrears.

ORDERS THE COURT CAN MAKE.

Case Dismissed.

Your case will be dismissed if your lender's solicitors have followed the wrong procedure in summoning you.

You can also ask for the case to be dismissed if you have made an arrangement with your lender, which they have been accepting, but your lender is now asking for a suspended possession order.

Case Adjourned.

Your case can be adjourned if it is obvious to the court that you need further time to provide financial details/seek advice, or if your circumstances are about to change and you wish to present these details to the court. Bear in mind that this will increase your costs, as it will involve another hearing at court.



HOUSING ADVISORY SERVICE

Suspended Possession Order.

This type of order is the most common form of order.

It is made in circumstances where you have offered, and possibly started to pay, an amount which is acceptable to your lender and the court.

As long as you continue to pay the amount ordered, no action will be taken.

You must go back to court to vary the order, if you cannot meet the terms of the order through change of circumstances. If you fail to make the payments agreed under the order, your lender will go back to court and ask for a possession warrant to evict you, without any further hearing.

You would be sent a copy of the warrant giving a date for eviction, but even at this stage you can apply to the court for the warrant to be set aside. You should give brief details of why you have defaulted on the court order, and a proposal to rectify the situation.

A hearing will then be set to discuss the new circumstances.

Outright Possession Order.

If the court is not convinced that you can clear the arrears an order for outright possession will be issued. This will normally give you 28 days before possession is given to your lender.

You can argue for more time if you have special needs. It is also a good idea to ask the court to allow you time to try to sell your home yourself, as you are more likely to get a better sale price than your lender, who will simply sell it as fast as they can.

You do not have to leave your home at this point, as your lender cannot evict you without a Possession Warrant.

Possession Warrant.

They can apply for this once the period of the order for possession has expired.

You can still negotiate with your lender at this point if you have a positive change of circumstances and can make a new offer.

There are several reasons for asking to have a Possession Warrant suspended;

- you can make a new offer of payment
- you were ill and could not attend the Possession hearing
- you need more time in which to sell your home
- you need more time in which to look for some where to live.



HOUSING ADVISORY SERVICE

A new hearing will be arranged which you must attend, allowing you to put your proposal forward in more detail. If you decide to do this, it is a good idea to contact the bailiffs to inform them of your intention.