

A Shelter advice booklet

Mortgage Arrears

How to cope with
mortgage arrears

Shelter



Mortgage Arrears

This advice booklet provides information on how best to cope with mortgage arrears. It will help anyone who has a mortgage on their house or flat, but is not designed to cover business loans or business premises.

Your home may be repossessed if you do not keep up repayments on your mortgage. The law is complex and if you do not act when the mortgage arrears arise, you could lose your home.

This booklet is only an introduction to the law in England. If you need more detailed information, you should get advice from a local Shelter advice service or a citizens advice bureau; contact Shelter's free housing advice helpline on **0808 800 4444** (open from 8am to 8pm on Mondays to Fridays and from 8am to 5pm on weekends, calls are free from UK landlines and main mobile networks); or visit **[shelter.org.uk/mortgagearrears](https://www.shelter.org.uk/mortgagearrears)**

Alternatively, contact one of the other organisations listed at the back of this booklet on pages 25–26. If you live in Wales, Scotland or Northern Ireland the law is different and you should contact Shelter Cymru, Shelter Scotland or the Housing Rights Service.

Contents

Mortgage arrears	4
Working out your options	4
Talk to your lender	5
Keep making mortgage payments	5
Easy steps	6
Ways to pay your arrears	6
Shared ownership mortgages	7
Selling your home	7
Government initiatives	8
Other options available to you	8
Claiming on insurance policies	8
Changing your mortgage lender	8
Remortgages/further loans	9
Increasing your mortgage	9
Can I rent out a room, or my whole home?	9
Claiming welfare benefits	10
Government mortgage rescue scheme	11
Private mortgage rescue schemes	11
Relationship breakdown, death, incapacity and bankruptcy	11
Negative equity	12
Should I hand in the keys?	12
Regulation and complaints	13
Your lender is taking you to court	13
Court forms	13
What the lender must do	14
Can I get legal aid?	14
Help at the court	14
Do I have a defence?	15
What will happen at court?	15
The possible outcomes	16
Can I do anything after a possession order has been made?	17
Bailiffs' warrants and bailiffs' notices	17
Costs	17
Sale by the lender after repossession	18
Can I apply as homeless?	18
Tenants of borrowers	18
Appendices	19

A mortgage is a loan that is ‘secured on’ your home.

There are many reasons for taking out a mortgage. The most common reason is that you want to buy a home. You cannot afford to buy it outright, so you have to borrow from a mortgage lender such as a bank or building society, and you can do this by a mortgage. This means that the lender takes a ‘legal interest’ in your home. For information about the different types of mortgage see page 19.

If you fail to make the mortgage repayments, then the lender can take steps to make you move out, and sell your home. Fortunately, problems can often be resolved before this stage is reached.

Mortgage arrears

If you fail to make a mortgage payment when it is due, the missed payment is said to be ‘mortgage arrears’. Mortgage arrears can lead to you losing your home. However, if you speak to your lender as soon as you have financial problems and you get advice when you need it, you may save your home. Most lenders will give you a reasonable amount of time to pay what you owe.

Working out your options

First, you need to ask yourself these questions:

- Are your difficulties likely to be long or short term?
- If you face redundancy, or have an illness, will you be able to return to work and, if so, when?
- Can you take temporary or part-time work to ease financial pressure?
- What resources can you draw on? Can you claim on a mortgage payment protection plan? Do you have a redundancy payment, savings or other assets? Can you claim welfare benefits?
- What is the property market like? Are homes selling well, or is the market difficult?
- Are you using your home fully? Could you live somewhere smaller or in a cheaper area, or could you rent out a room?
- Do you have other debts? If you do, get advice about dealing with all your creditors. It is essential that the payment of your mortgage, utility bills and council tax take priority.

You should also **work out your budget** to see what you can afford, and to see whether you can make savings on non-essential spending (eg gym membership, meals out). The budgeting forms on pages 23 to 24 can help you do this.

You can also use Shelter's mortgage calculator (see page 25) to get an idea of how a rise in interest rates could affect your monthly payments.

Talk to your lender

It is important to talk to your lender as soon as you can if you have arrears or have financial problems that could lead to arrears. There are things that your lender can do to help you, and your lender is more likely to help if you explain the problems you are facing. Don't ignore their phone calls or letters as this will only make matters worse. Don't be put off because you think your situation is hopeless. There is often a solution, but it usually involves talking to your lender. Most lenders see taking you to court as a last resort.

You can telephone first, but a meeting at a local branch of your lender or a longer telephone discussion may be necessary at a later date. The first person you speak to is not necessarily a person who has the knowledge or authority to help you. You may need to explain the problems you are facing more than once. You should be prepared to answer questions about your circumstances, for example:

- details of your income, outgoings, debts and savings – the budgeting forms on pages 23 to 24 can help you set these out
- what payments you can make

- any steps you may have taken to increase your income and to make savings.

If you can, write down what you tell your lender and what you agree to do. Make sure you are honest and realistic. It will not help you if you agree to make payments that you cannot afford.

Make sure that your lender has your latest contact details so that they can contact you easily.

If you fail to contact your lender, you can expect to receive reminder letters and for the lender to begin legal action to recover the arrears. The costs of this will be charged to you.

Lenders are usually helpful, and should be able to provide a list of the costs of various options open to you, so that you can compare them. You can also get independent advice from the organisations referred to at the beginning of this booklet.

Keep making mortgage payments

Making mortgage payments has to be a top priority, as you risk losing your home. It is essential to keep paying as much as you can afford. This will help to stop your mortgage arrears from rising too quickly. It will also show your lender that you are serious about trying to tackle the problem. The more you get into arrears on your mortgage payments, the more likely you are to lose your home.

If you have a large sum available, like a redundancy payment, it may be tempting to pay off some, or all, of your mortgage. This may not always be sensible, because you may need money for any remaining mortgage payments, household bills, and perhaps for retraining or setting up a new business. Also, you may have to pay a penalty if you pay your mortgage early.

It is not advisable to use your credit card to pay your mortgage. The interest rates for borrowing money on a credit card are high, much higher than the rates you pay on your mortgage. If your credit card bill is not paid, your credit card company could apply to the court for a 'charging order' on your property. If you still do not pay what you owe, the credit card companies can go back to court for an order to force a sale of your home to recover the debt.

Easy steps

There may be steps you could look into, such as:

- You may be able to make changes to your mortgage, for example, make reduced payments for a while or switch to a different interest rate. You may be able to change your payment date from early in the month to later in the month, which may help you budget if you move the mortgage payment date to shortly after your pay day.
- Your lender may have a more suitable mortgage. You may need a flexible mortgage if your income fluctuates, or a fixed rate if you are on a fixed income. You usually have to pay a fee for a new mortgage and a charge for bringing the old mortgage to an end, so think about whether a change is worth it.
- If there are any errors on your mortgage account, talk to your lender as early as possible.
- Can you find cheaper contents, buildings, life insurance, or mortgage protection insurance?

Ways to repay your arrears

You will have to pay, over a reasonable period, the arrears that have built up as well as your regular mortgage payments. There are a number of options you can discuss with your lender to help you to keep your home, such as:

- Allowing you to pay your arrears by instalments over a few months. If you need more time, the lender may want to capitalise your arrears (see fifth bullet below).
- Allowing you to pay interest only, or to pay reduced amounts. Your monthly payment will be reduced, especially if you have had a mortgage for many years. You will have to catch up later, but this may be useful if you have a temporary payment problem. If you switch to paying interest only

you may be eligible for help under the Government's Homeowner Mortgage Support Scheme (see 'Government mortgage rescue schemes' on page 11).

- Allowing you to pay less or no interest for a short period. You will have to catch up, and it is only likely to be agreed for a short 'payment holiday'.
- Allowing you to extend the mortgage term, which will reduce your monthly payment by spreading the repayments over more years. This may be sensible if your mortgage ends before your expected retirement age.
- Adding the arrears to the mortgage debt ('capitalising the arrears'). This means you will pay the arrears over the whole of the mortgage term and not immediately. You will have to pay interest on the capitalised arrears.
- If you have an endowment policy, your lender may agree to change your mortgage to a repayment mortgage. As long as you have been paying the endowment for some time (usually about two years), it will have a surrender value, which can be used to pay arrears or pay off part of the loan. Often the surrender value is a reduction in value of the endowment, so you might sell to one of the companies that specialise in buying endowments at a higher price than the surrender value.

The sooner you contact your lender the more options are likely to be available to you. The options available can depend upon the type of mortgage you have. These options will all cost you more money over the term of the mortgage. Some may lead to additional charges by your lender, so you may want to get further advice before using one of these options.

Shared ownership mortgages

If you have a shared ownership property, as well as talking to your lender, you should speak to the housing association that owns a share in your home. The housing association may be willing to buy part of your share in your home (a process known as 'staircasing down'). Your mortgage payment would be reduced, but your rent would be increased.

Selling your home

Sometimes your financial problems will be long term and you know it will not be possible for you to pay off the arrears, so it may be necessary for you to take steps to sell your home. If the lender takes you to court then sells the property, it is likely that it will sell for less than you might have obtained on the open market.

A lender may accept lower payments for a period to allow you to sell the property. You will need to get the lender's written permission to sell if the proceeds of a sale will not pay

off your outstanding mortgage (see 'Negative equity' on page 12). You should be very cautious of selling to private sale and rent back schemes or any other 'quick sell' schemes, as you will usually be paid much less than the market value of your home (see 'Private mortgage rescue schemes' on page 11).

You may decide that you will have to sell your home even though you cannot afford another smaller or cheaper one. You need to think carefully about where you will live. If you are going to apply to the council as homeless then you are strongly advised to get advice first as selling your property could reduce the help you would get (see 'Can I apply as homeless?' on page 18). Selling your home may also be appropriate if you are happy about finding a flat to rent privately, or you can move in with family or friends.

Government initiatives

You may be eligible for help under a scheme developed by the Government to help homeowners in financial difficulties (see 'Government mortgage rescue scheme' on page 11).

Other options available to you

Claiming on insurance policies

If you have a mortgage payment protection plan, check whether

you can make a claim under it. For temporary unemployment, your plan may only pay interest for a limited period, but if you have a long-term illness or disability, your plan may provide for payment of the whole loan. Check your insurance before you make decisions that may affect it. For example, your policy may allow you to claim if you are made redundant but not if you take voluntary redundancy. If you do not understand your policy or your lender tells you that you can't claim, get advice as soon as possible.

Changing your mortgage lender

If you have arrears, it will be difficult to get a new mortgage on good terms. The new company will ask detailed questions about your circumstances, and these must be answered fully and honestly. However, if you foresee a change in circumstances (eg you are planning to start a family), it may be possible to reduce your mortgage payments by getting a different mortgage either from your existing lender or from another lender. You might get a lower interest rate, a fixed rate, a longer term, or even 'cashback' when you take your mortgage.

Remortgages/further loans

You may be tempted to pay off your mortgage arrears, pay other debts and get extra money to deal with future problems by arranging

a remortgage, second mortgage or secured loan. Some 'debt management' companies offer you a loan to pay off your current mortgage and all your other debts. However, there may be higher interest rates than you are currently paying, large arrangement fees, and a shorter period to pay off the loan. Advertising can be misleading, sometimes representing that the lender will provide impartial advice, when it will not.

You should usually avoid trying to borrow further to pay off your mortgage debts. Even if the loan is not secured against your home the lender could apply to the court for a 'charging order' on your property if you do not pay. If you still do not pay what you owe they can go back to the court for an order to force a sale of your home to recover the debt. This can apply whether the loan is from a reputable firm, such as a credit card company, or a loan shark.

You could easily make your position worse, so you should always get independent advice before trying to borrow or remortgage your way out of difficulty.

Increasing your mortgage

You may need to pay a large bill, such as for major house repairs or improvements, and this may give you a temporary cash-flow problem. You could ask your lender to advance further money on your mortgage.

Although, it is usually cheaper to use your savings than borrowing more money in order to pay for one-off bills.

Can I rent out a room, or my whole home?

One way of increasing your income is to let out a spare room in your home, or even letting out your whole home. Your mortgage may prohibit letting, or you may need the permission of your lender to do this, so always check with the mortgage company first. You may also need to inform your household insurer. If you live in a flat, you will need to check what your lease says too.

Any rent that you receive is income, and can affect the level of the income tax you pay or the welfare benefits you receive. You must tell HM Revenue and Customs if you pay tax and Jobcentre Plus if you are in receipt of welfare benefits.

Under the Government's **Rent a room scheme** if you take in a lodger no income tax is paid on the rent you receive up to £4,250 per year (about £80 per week). Income tax is paid on any rent you receive above £4,250 a year. You can claim the 'Rent a Room' exemption if you tell HM Revenue & Customs. If you are in receipt of income support, income-based jobseeker's allowance, or council tax benefit, some of the rent you receive is disregarded when the Jobcentre Plus calculates your

entitlement to benefit. If you lived alone before renting out a room you will no longer be entitled to the single person discount of 25 per cent on your council tax bill. Although if your lodger is on a low income or benefits you may be entitled to a second adult rebate. Further information about the rent a room scheme can found on the Directgov website (see 'Useful organisations' on page 25).

Claiming welfare benefits

If you (or your partner) are claiming income support, income-based JSA, income-related ESA or pension credit, you may be able to get help with paying your mortgage. This type of help is known as support for mortgage interest (SMI). SMI is paid direct to your lender. The loan must have been taken out to buy your home, an additional interest in your home (eg buying the freehold or buying your former partner's share), or for essential repairs or improvements. If part of your mortgage was used for non-housing costs (eg buying a car) you will not get SMI for interest on that part of the loan.

Normally you will have to wait 13 weeks after claiming before SMI is paid. If you are in receipt of pension credit, SMI can be paid straight away. If you are in receipt of income-based JSA, normally you will only get SMI for a maximum of two years.

SMI can be paid on interest payments on loans, but only up to the value of £200,000 (eg if your loan is for £250,000 you will only get SMI for the interest payable on £200,000 of that loan). If you are in receipt of pension credit or you claimed SMI before 5 January 2009, SMI will only be paid on interest payments on any loan up to the value of £100,000. SMI is calculated at a standard rate, regardless of the interest rate you actually pay on your mortgage – the rate at the date of publication is 3.63 per cent (any changes to the rate will be found on the Directgov website or by contacting Jobcentre Plus).

If you suffer a financial setback such as the loss of your job, you should check what benefits you can claim, unless you have another job starting almost immediately. You may not qualify for a benefit straight away but you may after your housing costs are taken into account. Even if you do not qualify for benefits at all, you may claim national insurance credits while out of work, and can get advice about when you might be able to claim if you are unable to return to work.

You can get information about welfare benefits by contacting Jobcentre Plus or visiting the Directgov website (see 'Useful organisations' on page 25).

Government mortgage rescue scheme

The Government set up the mortgage rescue scheme (MRS) to help homeowners in financial difficulty, although not all homeowners are eligible for it. Under the scheme you are referred to a money adviser to discuss your financial situation.

The scheme operates by a shared equity loan (a housing association makes a loan which is secured against your property) or by a mortgage to rent scheme (a housing association buys your home and rents it back to you, and you will be given a tenancy with a minimum term of three years). You may still be eligible to apply even if you are in negative equity (see page 12), but your mortgage must not be worth more than 120 per cent of the value of your home, and your household income must be under £60,000 per year. One or more of the following must also be part of your household:

- a dependent child
- a pregnant woman
- someone who is 'vulnerable' because they are an older person, have a disability, are ill, or for some other reason.

You must have explored all other options with your lender before you can be eligible. MRS is administered by local councils.

Private mortgage rescue schemes

You should be aware that there are some private companies which provide 'mortgage rescue schemes', also known as 'sale and rent back' or 'sale and lease back' schemes. These schemes are marketed to offer an immediate solution to a homeowner's financial problems. They allow you to remain in your home, but only as a tenant. Always check the tenancy agreement you are offered. From July 2010 a tenancy must be for a minimum period of five years. These schemes should be treated with great caution as it can be easy for the new owners to evict you once your home is rented back to you, particularly after the initial tenancy agreement you get has ended. The companies offering these schemes can also normally buy the property at significantly less than its market value. These schemes should be registered with the Financial Services Authority (FSA) (see 'Useful organisations' on page 25), which requires the companies to comply with certain standards. You should especially be wary of any other 'quick sell' schemes that might not be registered with the FSA.

Relationship breakdown, death, incapacity and bankruptcy

When a marriage or partnership breaks down, there can be complicated legal problems about

the home. If your partner dies, there can be issues to consider about ownership, tax and other people's rights. And if you or your partner face a long-term illness, particularly if residential care will be necessary or if one of you is incapable of managing your own affairs, there will be different issues again. You should get advice from one of the advice agencies referred to in the introduction to this booklet, and inform your lender about what is happening and what your plans are.

If you become bankrupt (or where your home is jointly owned, if one of the owners becomes bankrupt), your home is at risk but you may not necessarily lose it. You need to discuss your position with your trustee in bankruptcy. You need to have a place to live, so you may be allowed to make mortgage payments.

Negative equity

If the money you receive from selling your home is not enough to pay sale costs (such as the estate agent and solicitor fees) and the full amount outstanding on your mortgage loan, then you have 'negative equity'. You can only sell with the permission of your mortgage lender. You need to show that it is in the interest of the lender to allow the sale, which may not be possible if the lender believes that the property market will improve. If your lender is being unreasonable, you may force a sale by going to court.

If your home is sold with negative equity, the lender can still expect you to pay the balance outstanding on the loan, and can continue adding interest until it is paid. If you do not pay, the lender could take you to court or make you bankrupt. If you can afford to pay part of the balance but not all, the lender may accept a payment 'in full and final settlement' of the debt. You should get advice from a solicitor, insolvency practitioner or one of the advice agencies mentioned in this booklet, to make sure that the agreement is final.

The lender may appear to forget about you for months or years, but could then contact you about your debt. If the lender leaves it for twelve years or more, the claim against you may be 'time barred', as long as you have not 'admitted' the debt. So, if your lender contacts you after many years of doing nothing, you should get advice before replying to the letter. You may now owe nothing.

Should I hand in the keys?

It is usually not advisable to hand your keys to the lender. It does not bring the mortgage to an end, you can still be taken to court for missed payments, and the interest continues to run. The mortgage will not come to an end until the home is sold and the loan is repaid. Lenders must get the market price when they sell, but usually the home will sell more quickly and get a better price if you

do it. The other reason not to hand in the keys is that you will have to find another place to live, and the council may not be willing to house you if you have made yourself intentionally homeless (see ‘Can I apply as homeless?’ on page 18).

If your lender asks you to hand in the keys or move out, this is likely to be part of the possession process. It might be sensible to move out if you know the home must be sold and the lender has a specific sale planned. You should get advice on what to do.

Regulation and complaints

If a lender offers mortgages it must be regulated with the Financial Services Authority (FSA), unless they are buy-to-let mortgages or second charge mortgages. The FSA sets standards that the lender must comply with – this includes giving you certain information when you first ask them for a mortgage and how it deals with you if you fall into mortgage arrears. You can check with the FSA if a lender is on its register. Most lenders must provide a free complaints service. If you think the lender has not dealt with your complaint properly, you can complain to the Financial Services Ombudsman (see ‘Useful organisations’ on page 25).

Your lender is taking you to court

If you have mortgage arrears your lender may take you to court. This may be for money you owe, or it may be for possession of your home, or both. The lender can’t force you to leave your home except by getting a court order. However, if you move out of your home, or if you have a mortgage on other land (eg business premises), the lender may take possession without a court order, and may change the locks – although lenders very rarely take this course.

Court forms

You will receive a ‘claim form’ from the court, usually the local county court, which will set out the claim and what the lender wants. If the lender wants possession of your home, there will be a date, time and place for the court hearing.

The court will also send you a reply form (a ‘defence form’), which you should return to the court within **14 days**. This is for you to tell the court about your financial situation, any offers to repay the arrears, any other information that you think the judge needs to know (for example, why you missed payments). Whether you return the defence form or not, it is very important that you attend the hearing. If you need more time, you can ask the court to adjourn the hearing, this means postponing the hearing to a later date. The court

will need a good reason to agree to postpone the hearing.

The claim form does not mean that you will lose your home. The process can be stopped at any stage. There is still time to negotiate with the lender, and still many options to consider. Remember that most lenders would prefer your continued custom as a borrower, than to take your home.

What the lender must do

Both you and your lender are expected to take reasonable steps to avoid the case going to court. These steps are known as the 'pre-action protocol'. Going to court should be last resort.

The lender should have discussed your financial problems with you and considered any proposals that you made to deal with your arrears. The lender should consider not going to court if you have made a claim for support for mortgage interest (see 'Claiming welfare benefits' on page 10) or for a mortgage payment protection plan (see 'Claiming on insurance policies' on page 8), and you will be able to meet any shortfall on your mortgage instalments if the claims are paid, or if you are taking active steps to sell your property.

The lender is required to give the court a checklist showing that it has followed the pre-action protocol. If the lender has not followed the pre-action protocol, the court can postpone the hearing.

Can I get legal aid?

If you decide to see a solicitor, you may be entitled to public funding, often referred to as legal help and legal aid. If you are eligible for legal help you can get free legal advice. If you are also eligible for legal aid, the Government pays your legal costs, although you may have to make a contribution. In some circumstances, it is possible that you will have to pay your costs from the sale proceeds when you sell your home, although this may be in many years' time.

However, many solicitors do not offer legal help or aid. You can get details of solicitors who do from Community Legal Advice (see 'Useful organisations' on page 25). There is a 'means test'. You will qualify for legal help if you are on certain benefits or you have a low income. To qualify for legal aid you must also have a good chance of success in court, your solicitor will be able to advise you about this.

If you do not qualify for legal aid, a solicitor may be willing to do a first interview with you for a fixed fee, but following that, the fees can get expensive.

Help at the court

There is a duty advice scheme in many county courts. A duty solicitor or adviser can give you last minute help at the court by giving you advice, representing you before the judge, and negotiating with your lender. This

service is free regardless of your income, but you will not necessarily get any further help after the court hearing. It is much better to get advice before this stage, if possible.

Do I have a defence?

Normally your chances of keeping your home depend upon your ability to pay your mortgage and any arrears over a reasonable period but in some circumstances, you may have a good reason not to make payments under a mortgage, and this reason may be a legal defence if a court case is brought against you. It is not possible to list all possible defences, but here are a few examples:

- Error by the lender. This is rare, but does happen occasionally. Always check your records carefully, as it might be your error, or a cheque may have been lost in the post.
- Bank charges can sometimes be challenged. More information is available from the Office of Fair Trading (see page 26).
- If you have a consumer credit loan, not borrowed for the purchase of your home or other land, you may be able to claim that it is an extortionate credit bargain or that certain legal formalities have been overlooked. The loan may be reduced as a result.
- Duress (you were forced to sign a mortgage) or undue influence (you signed a mortgage because

a family member or a professional adviser talked you into it although it was against your interests) may invalidate your mortgage, especially if you have agreed to a mortgage on your home so that someone else can get money, eg for a business.

Except in straightforward cases, get legal advice if you think you may have a defence. If you fail to make payments, your home may be at risk, but if you do make payments, you may undermine your defence.

What will happen at court?

When you arrive at court, you need to give your name to the court staff so that they will tell you when the judge is ready. There are often a lot of cases listed at the same time, so you may have to wait. When the judge is ready, you will be shown into a room. This may be a court room, but often it is a smaller room or office. Your hearing will be private; and there will usually only be you, your solicitor or adviser (if you have one), the lender's solicitor or representative, and the judge. If you want a friend to be present to help you, the judge can allow this, but usually you will be expected to speak for yourself unless you have a solicitor. If there is a duty solicitor or adviser, s/he may speak for you.

The lender's solicitor or representative will speak first, and will explain what the lender wants.

Then it is your turn. You should expect to justify what you say, and have with you any documents that you think the judge might want to see (eg pay slips, bank statements, evidence of any lump sum payments due to you which you could use to pay the arrears, evidence of a job offer). It is not necessary for you to use formal words, but it is usual to address the judge as 'Sir' or 'Madam'. The judge may ask you questions.

The judge will then decide what will happen next.

The possible outcomes

There is a range of decisions the judge can make, of which the most likely are:

- **Dismissal** – where the arrears have been paid. This will be the end of the case.
- **Procedural adjournment** – where for example the lender has failed to follow the pre-action protocol (see 'What the lender must do' on page 14), or where you need time to get legal advice. Be ready to explain why you have not yet been to get advice, and if you have an appointment, when it is.
- **Adjournment** – to give you time to pay the arrears over a reasonable period.
- **Case management directions** – if you have a defence (see 'Do I have a defence?' on page 15). The 'directions' are instructions from

the judge to tell you and the lender what you must do to get the case ready for a trial.

- **Suspended or postponed possession order** – this is a possession order but if you keep to the order, usually by making payments required by the order, then you will not have to leave your home. If you break the order, then you will be at risk of eviction. You may still have time to apply to the court to suspend any eviction.
- **Outright possession order** – this will give you a date by which you must leave your home.
- **A money judgment** – the lender does not need a money judgment when a possession order has been made, and can take what is due from the proceeds of the sale. A judgment may be made if the arrears have been reduced to a small amount, or where the amount of the arrears has been disputed.

Generally, the judge will want to adjourn or make a suspended/postponed possession order, provided that you can show that you will pay the arrears within a reasonable period, which may be over several months or even years. You will need to show not only that you are willing to pay, but also that you will be able to pay. Remember that you need to pay the future

mortgage payments as well, and meet other debts and ordinary household bills. It will help if you have a list of your income, outgoings, debts and savings – you will find a budgeting form to help you with this on pages 23 to 24. Be prepared to explain why your circumstances have improved, or are likely to improve, and the changes that you have made or can make to ensure that payments are made in the future.

Can I do anything after a possession order has been made?

- You can **appeal**, if the judge has got the law wrong. You should get legal advice before appealing, as it might not be the best course of action.
- You can apply for the possession order to be **set aside**, for example if you failed to attend the hearing, you had a good reason for failing to attend, and you have good reasons why a possession order should not have been made.
- You can apply for the possession order to be **varied or suspended**, if there has been a change in your circumstances that justify the change. For example, you may have cleared a large part of the arrears, or got a new job so you can afford to clear the arrears.
- You can apply for a **stay of the warrant for eviction**. This prevents the bailiffs evicting you

for a period while you appeal, apply to set aside, vary or suspend the possession order.

All of these applications can be made over the counter at the court. You will have to pay a fee unless you are exempt because you have a low income. You can get advice from a solicitor or one of the advice agencies mentioned in the introduction to this guide.

Bailiffs' warrants and bailiffs' notices

If an outright possession order is made against you, or if you fail to meet the conditions set out in a suspended possession order, the lender can ask the court bailiffs to evict you. The bailiffs will send you a letter about 14 days before they are coming. It is best to leave with your belongings. If you fail to leave, the bailiffs can evict you.

Costs

Most mortgages allow the lender to charge you for any of the costs of taking any action after you fall into arrears with your mortgage. These costs will be added to the amount outstanding on your mortgage. If the lender takes you to court, the costs can run into hundreds of pounds. If you fight the case, the costs may be a lot more. This is one reason that it is essential to get legal advice if

you are fighting a mortgage case. If you take steps that later prove to be wrong, you could add to your debts and to your problems.

Sometimes the lender makes mistakes during a court case. If this happens, and especially if the case is dismissed or adjourned as a result, you can ask the judge to order the lender not to charge you for the wasted costs. But if the lender brings a case against you and you then pay the arrears, you must pay the costs even if you think that the court case was unnecessary.

Sale by the lender after repossession

Usually there is nothing you can do to stop the lender selling your home at this stage, but if you can afford to repay the whole loan including all arrears and costs, then the lender may agree to allow you to have your home back. If the lender intends to sell your home for less than it is worth, you may be able to get a court order to stop this happening, but you should get legal advice first.

After your home is sold, the lender uses the money received to pay its sale costs and the outstanding mortgage. If there is any money left, this should be paid to you. If there is not enough money to pay everything, then you can be made to pay the balance. See 'Negative equity' on page 12.

Can I apply as homeless?

You can ask your local council's housing department for help if you have nowhere to stay or are likely to lose your home in the next 28 days. The council is legally required to give you advice about finding a place to live. Depending on your situation, you may also be entitled to accommodation. You can get more information from a Shelter advice service, or by reading the free Shelter guide *Homeless? Read this*, or by visiting [shelter.org.uk/advice](https://www.shelter.org.uk/advice)

Tenants of borrowers

When a borrower has rented out their home and fallen into arrears on the mortgage, the tenant will face the threat of eviction if the lender takes the borrower to court. A mortgage lender who has issued a claim for possession against a borrower must serve a notice on the property addressed to 'the occupiers'. Usually, if the court makes an outright possession order against the borrower, this will apply to the tenant as well. However, you can ask the court to postpone the date on which you have to leave the property by up to two months. Some tenants even have the right to stay in the property, and in that case the mortgage lender will become your landlord.

If you are a tenant in this situation get advice as soon as possible.

Appendix 1

Types of mortgage

The following gives a brief overview of the different types of mortgage available, and related information.

Arranging a mortgage

Mortgages can be arranged at high street branches of banks and building societies, through brokers and agencies, and on the internet. It is worth comparing the different mortgages available. You should consider:

- Interest rates, which can be fixed, variable, tracker or discounted.
- How easy it is to transfer to another mortgage product with the same lender, or change lender, and what charges there might be.
- Can you increase payments, or make lump sum payments, if your position improves? Can you decrease them if problems arise?
- Your own research, eg ask at banks or building societies, check financial pages in newspapers and look on the internet.
- Most brokers and agencies will not charge you an arrangement fee. They must provide you with an initial disclosure document providing details of the service they provide and any fees they charge.

A **capital repayment mortgage** is a loan for a fixed period of years, often 25 years or ending at your expected retirement date. You must pay a certain amount of money each month. At first, most of the money paid is used to pay the interest on the loan, and a small amount is used to pay off part of the loan. As the loan is gradually reduced, the amount of your payment used to pay interest gets smaller, and so the loan is paid off at an increasing rate. At the end of the loan period, provided you have made all of the payments, the loan will have been paid in full.

With an **interest-only mortgage**, you pay interest on the loan in monthly instalments but you do not pay off any of the capital. Generally the monthly repayments are lower than with repayment mortgages. Often, you make payments into a separate investment scheme, for example, an **endowment policy**, which is designed to build up enough money to pay off the capital at the end of the term.

An investment scheme can take various forms. At the end of the term, the policy matures and you get a lump sum, which should be enough to repay the loan. However, since the premiums are invested and subject to changes in the market, many people who took out endowment policies found the lump sum was

significantly less than the amount of the original loan, in which case they still owed the lender the outstanding balance.

There are interest-only mortgages that have no investment scheme, and the borrower gambles on rising property prices to be able to pay off the original loan. If prices fall, you risk having a large debt and being repossessed by the lender.

The **interest rates** on capital repayment and interest-only mortgages can be fixed, variable, tracker or discounted. A fixed rate lasts for a period of years and after that you may be able to get another fixed rate. Variable interest will rise or fall as the lender's interest rates change. A tracker rate goes up and down according to the external rate to which it is linked, such as the Bank of England rate. A discounted rate is a variable rate but discounted (or reduced) for a fixed period. A **flexible mortgage** allows you to vary your monthly payments, within limits, or make lump sum payments.

Equity release (sometimes known as capital release, home reversion or lifetime mortgage) is a range of products that enable a person with spare equity in their home to borrow money. They are often intended for older people. Typically, after the loan is made, either low or no payments are due until after the borrower's death

when the home must be sold and the loan repaid in full. Some of these agreements are mortgages, but some are a form of leasing. While equity release may be suitable for some people, the cost of borrowing can be very high indeed, and you should get advice before taking out this kind of loan.

Shared ownership mortgages are linked to a shared ownership agreement. There are various kinds of agreement, but typically the home is owned in part by a housing association and partly by the homeowner, who pays the housing association rent for its share and makes mortgage payments for the rest. If the homeowner's circumstances improve, s/he can buy a greater share of the home from the housing association ('staircasing up'). Shared ownership mortgages are usually capital repayment mortgages.

Islamic mortgages are products designed to comply with Shari'ah (Islamic religious law), and do not have interest payments. The most common forms are Murabaha and Ijara. Ijara is a leasing agreement where you arrange for the bank to buy a home, and you then make payments to the bank as rent and instalments of the purchase price. When all instalments have been paid, the home is transferred to you.

Murabaha is a form of mortgage transaction where the bank buys the home and sells it to you at a higher price to include the bank's profit, again to be paid by instalments. The bank retains a mortgage until all instalments have been paid.

A **second mortgage** or **secured loan** is a mortgage for something other than home purchase. You usually make a monthly payment, which pays interest and part of the loan. Interest rates and charges are often much higher than other mortgages. Some lenders are happy to lend to high-risk borrowers, knowing that they can sell your home to repay the loan. Always consider other options like using savings or increasing your main mortgage. You should only take a loan where you know that you can afford the repayments, and make sure you understand interest rates and other charges.

Remortgaging refers to ending your current mortgage agreement and entering into a new one with a different lender. You may want to do this to obtain lower monthly payments or to enter a fixed-rate agreement. You take out a new mortgage which pays off the old mortgage. The term remortgaging does not apply to the situation where you switch to a new mortgage product with the same lender.

Buy-to-let mortgages are loans granted to enable the borrower to buy a property to rent out rather than live in.

Business loans and overdrafts are often linked with a mortgage on a home. Remember your home is at risk even if you are not the borrower, and get advice before agreeing to any mortgage.

Family mortgage – a loan from a member of your family to buy a property can be in the form of a mortgage. You should get advice from a solicitor or conveyancer to set up the mortgage.

Sub-prime mortgages are a type of mortgage available to people with uncertain incomes or poor credit histories who find it difficult to get a mortgage from banks or building societies. Generally the interest rates are higher and the lender is more likely to take action to evict you if you have mortgage arrears.

Insurance policies – there are a number of policies to consider when you take out a mortgage:

- You must have house insurance. If you own a flat, this is probably arranged by the freeholder, and if you own a house, it is arranged by you. Some lenders include insurance as part of the mortgage package, and some lenders will sell you their own insurance if you want it.

- An endowment mortgage usually includes life assurance, but if you have a repayment or interest-only mortgage you may need to pay for life assurance. At its cheapest, this will pay off the loan if you should die, but a more expensive policy can be an investment.
- A payment protection plan is an insurance policy to meet your mortgage payments if you fall ill or lose your job. Check carefully what you are being offered and what it covers. Your plan is unlikely to cover existing medical conditions or voluntary redundancy, and may only pay your monthly mortgage payments for a limited period.
- Mortgage indemnity insurance is to protect the lender and not you, in case you fail to make the payments due and there is a shortfall after your lender has sold your property. If the insurer pays out, the insurer can then make you pay them the shortfall. You may have to pay for a policy if your mortgage is for more than 75 per cent of the value of your home.

Appendix 2

Budgeting forms

The following two forms can help you to work out how much money you have to pay your bills each month. If you are going to see your lender, you may find it helpful if you fill out these forms and take them with you. An

adviser at one of the organisations listed on pages 25 and 26 of this booklet may also be able to help you.

In addition, there are helpful online budget calculators you can get from the Debt Advice Foundation, Money Advice Service and other organisations listed on the Shelter website at shltr.org.uk/13b

Budget forms

Income per month	£
Wages/Partner's wages	
Child benefit	
Tax credits	
Income support/JSA	
Pension/Pension credit	
Other benefits	
Child maintenance	
Student loans	
Other	
Total	

Outgoings per month	£
Mortgage payments	
Mortgage endowment policy	
Pension/Life insurance	
Electricity	
Gas	
Water	
Council Tax	
Insurance	
TV licence	
Phone/Internet/TV	
Mobile phone	
Credit card	
Student loans	
Hire purchase/other loans	
Travel to work	
Car	
Child care costs	
Child maintenance payments	
Food	
Toiletries	
Clothes	
Cigarettes	
Alcohol	
Going out	
Holidays	
Other (eg gym membership)	
Total	

Appendix 3

Useful organisations

To contact Shelter

You can call our free housing advice helpline on **0808 800 4444**. (The helpline is open from 8am to 8pm on Mondays to Fridays and from 8am to 5pm on weekends. Calls are free from UK landlines and main mobile networks.) We can provide minicom or interpreting services if required.

Visit our website for more information about your housing rights and details of our local advice centres:

shelter.org.uk/advice

Shelter's mortgage calculator can be found at **shltr.org.uk/1jt**

Other organisations that may be able to help you:

Advice UK

020 7469 5700

mail@adviceuk.co.uk

www.adviceuk.org.uk

Citizens Advice

To find details of your local bureau go to www.citizensadvice.org.uk

Community Legal Advice

helpline 0845 345 4 345

www.direct.gov.uk/contactCLA

Council of Mortgage Lenders

Bush House, North West Wing,
Aldwych, London WC2B 4PJ
www.cml.org.uk

Debt Advice Foundation

0800 043 4050

www.debtadvicefoundation.org

Directgov

www.direct.gov.uk

Financial Services Authority

020 7066 1000

Consumer Helpline 0300 500 5000

www.fsa.gov.uk

The Financial Services Authority provides very useful information for the general public about mortgages on its Money Advice Service website at www.moneyadvice.service.org.uk

Housing Rights Service

(Northern Ireland)

4th Floor, Middleton Buildings,

10–12 High Street, Belfast BT1 2BA

028 9024 5640

www.housingrights.org.uk

HM Revenue & Customs

There are local advice offices in many towns, and advice available regionally by post and telephone.

For more details visit www.hmrc.gov

Jobcentre Plus

The government agency to contact
to make a claim for benefits.

0800 0 55 66 88

www.jobcentreplus.gov.uk

Law Centres Federation

020 7387 8570

www.lawcentres.org.uk

National Debtline

0808 800 4000

www.nationaldebtline.co.uk

Office of Fair Trading

Consumer advice and information

08454 04 05 06

www.oft.gov.uk/Consumer/Money

Shelter Cymru

25 Walter Road,

Swansea SA1 5NN

01792 469400

sheltercymru.org.uk

Shelter Scotland

Scotiabank House,

6 South Charlotte Street,

Edinburgh EH2 4AW

0344 515 2444

shelter.scotland.org.uk/getadvice

Until there's a home for everyone

In our affluent nation, tens of thousands of people wake up every day in housing that is run-down, overcrowded, or dangerous. Many others have lost their home altogether. The desperate lack of decent, affordable housing is robbing us of security, health, and a fair chance in life.

Shelter believes everyone should have a home.

More than one million people a year come to us for advice and support via our website, helplines and national network of services. We help people to find and keep a home in a place where they can thrive, and tackle the root causes of bad housing by campaigning for new laws, policies, and solutions.

Visit shelter.org.uk to join our campaign, find housing advice, or make a donation.

**We need your help to continue our work.
Please support us.**

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