

Mortgage arrears

NATIONAL
DEBTLINE

This fact sheet covers **England & Wales**. We also have a version for [Scotland](#) if you need it.

This fact sheet gives you information and advice if you are behind with the payments on your mortgage. It explains your options to deal with this type of debt and the processes your lender must follow.

Use this fact sheet to:

- find out if there is any help you can get;
- work out which option is right for you;
- help you negotiate with your lender; and
- get advice about how to deal with court action.

This fact sheet also includes some useful contacts and links for you to get further help.

In partnership with NHAS and Citizens Advice

We would like to thank the National Homelessness Advice Service (NHAS) and Citizens Advice for their help with the writing of this fact sheet.

Coronavirus

If you have been affected by coronavirus and are struggling to pay your mortgage, see our [Coronavirus advice and support fact sheet](#). It will explain whether there are any temporary protections or any extra support in place to help you.

This fact sheet does **not** deal with:

- interest only mortgages that are coming to the end of their term; or
- interest only mortgages that have already ended.

Your options will be different in these circumstances so contact us for advice.

You may have a first and a second mortgage.

- The first mortgage is the loan you took out buy your home.
- The second mortgage (also known as a 'secured loan', 'further advance', 'second charge' or sometimes a 'consolidation loan') is a separate loan secured on your home.

Check all your loan agreements to see if they are 'unsecured' or 'secured' on your home. If they are secured, you must treat them as priority debts because lenders can ask the court for possession of your home if you do not pay.

First steps

- If you are struggling to pay your mortgage or secured loan, and you haven't already done so, get some advice as soon as possible. It is important to look at your whole situation, as you may have other debts that need dealing with as well as your mortgage. Contact us for advice.

- It is never too early or too late to contact your lender. You may be worried about talking to them, but if you tell them you are getting advice, this should help. Write to them, phone them or make an appointment to see someone. If the first person you speak to isn't helpful, ask to speak to someone else, perhaps in head office.
- Pay as much as you can. Even if you have not paid for a while, or cannot afford the full amount each month, you should start paying as much as you can afford.

Most lenders are regulated by the Financial Conduct Authority (FCA). Before **1 April 2013**, the FCA was known as the Financial Services Authority (FSA). FCA rules say that a lender must 'deal fairly with any customer who is in arrears'. The FCA rules are contained in the **Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)**. We list these rules later in this fact sheet.

Relationship breakdown

If you have experienced a relationship breakdown, you may need extra advice. Dealing with your lender, and applying for benefits can sometimes be more complicated following a relationship breakdown. For example, if your partner is named on the mortgage, then the lender may also want information from them before they agree to a new payment plan. Contact Shelter or contact us for advice. See **Useful contacts** at the end of this fact sheet.

Help with mortgage payments

If you need help with your mortgage and you are claiming certain benefits, you may be able to apply for a loan to help with the mortgage payment. Support for Mortgage Interest (SMI) helps people who qualify with payments towards the interest payments on their mortgage.

Before **6 April 2018**, SMI was a benefit. From **6 April 2018** SMI is a loan. The loan is provided by the Department for Work and Pensions (DWP) and will usually be secured to your property. The loan attracts interest. This is a complicated area so contact us for advice.

Which benefits do I need to claim to get support for mortgage interest?

If you claim Income Support, Pension Credit, income-related Employment and Support Allowance or income-based Jobseeker's Allowance, you should be able to apply to the DWP for a loan to pay some, or all, of the interest on your mortgage. If you claim Universal Credit (UC) the rules are more complicated. You may be able to claim for a loan for mortgage interest as long as you have not done any paid work at all during the time you claimed UC.

These are called **qualifying benefits**.

When can I claim support for mortgage interest?

If you claim Pension Credit (PC) you can qualify for help from the loan payments as soon as you claim PC. In other words, there is no waiting period.

If you claim Income Support, income-related Employment and Support Allowance or income-based Jobseeker's Allowance, you cannot receive loan payments until you have been claiming these qualifying benefits for **39 weeks**.

If you claim UC you cannot receive loan payments for **39 weeks**. During this **39 week** period you are not allowed to do any paid work. If you do any paid work, the waiting period starts again from the beginning.

How much of my mortgage will be covered by the loan?

The government has set a maximum amount of mortgage that the loan will help towards. This is:

- **£200,000** if you are of working age; or
- **£100,000** if you receive Pension Credit.

The Support for Mortgage Interest is to be paid towards the mortgage on the house you normally live in. If you claim Income Support, Pension Credit, income-related Employment Support Allowance or income-based Jobseeker's Allowance, the loan may also pay towards a secured loan for home improvements or repairs that you did prior to claiming benefits.

If you claim UC, the housing costs element is paid towards the interest payments due on any debt which is secured on your home, or an alternative finance payment (for example, an Islamic mortgage).

How long can I claim the loan for?

You can claim the loan for as long as you are entitled to the qualifying benefit. There is no time limit for how long you can have the loan. This is different to the old SMI benefit.

Do I have to repay the loan?

You will be expected to pay the loan for mortgage interest back. However, you do not have to start paying it back straight away. You will be asked to repay the loan if:

- you sell your home;
- the title for your property is transferred, assigned or otherwise disposed of; or
- you die.

If you live at home with a partner who also claims benefits, then the loan will not need to be repaid until both of you do not need the house any longer. In any of these situations, if there is not enough equity to repay the loan, any money still outstanding will be written off. In other words, if there is not enough money left from your house sale to pay off your mortgage and the loan for mortgage interest, the DWP will not ask for more money.

You can choose to start to repay the loan for mortgage interest. You must pay at least **£100** at one time, unless you owe less than **£100** in total.

Do I have to claim the loan?

No, you do not have to claim the loan. It is optional. If you do not agree to accept the loan, you will need to find another way of paying your mortgage payments. The [MoneyHelper website \(https://www.moneyhelper.org.uk/en/benefits/benefits-to-help-with-housing-costs/support-for-mortgage-interest\)](https://www.moneyhelper.org.uk/en/benefits/benefits-to-help-with-housing-costs/support-for-mortgage-interest) has some useful information about this. You may need to take some independent financial advice to help you decide what to do. You can find an [independent financial adviser \(https://www.moneyhelper.org.uk/en/getting-help-and-advice/financial-advisers/choosing-a-financial-adviser\)](https://www.moneyhelper.org.uk/en/getting-help-and-advice/financial-advisers/choosing-a-financial-adviser) on the MoneyHelper website.

Increasing your income

It is very important to make sure that you are getting all of the benefits and extra help you might be entitled to.

If you have mortgage payment protection insurance, check to see if you can make a claim. If you are turned down, contact us for advice.

To check you are getting everything you should, use an online benefits checker. For example, search for 'benefits calculator' at [www.turn2us.org.uk \(https://www.turn2us.org.uk/\)](https://www.turn2us.org.uk). Or you could contact a local advice centre. Contact MoneyHelper to find local advice. See **Useful contacts** at the end of this fact sheet.

Mortgage arrears options

Each lender will have their own procedures for dealing with someone who is having difficulty paying their mortgage. In this section, we explain the most common types of arrangements that lenders will consider.

There may be several options available for dealing with your mortgage arrears. Make sure that you check whether your lender will add extra charges for any option that you are considering.

Breathing space

If you need time to get debt advice and find a debt solution, you may want to consider applying for breathing space.

Breathing space will stop most types of enforcement and also stop most creditors applying interest and charges for **60 days**.

To find out more, see our [Breathing space fact sheet](#).

How to make an offer

If you can afford your monthly mortgage payment, but have arrears, it is important to start paying your normal monthly instalment and come to an arrangement with your lender to pay off the arrears.

Use your personal budget to work out if you can afford your normal payment, and what you can afford towards the arrears.

Lenders will sometimes ask you to pay off the arrears over **12 to 24 months**. **If you cannot afford to do this, ask for longer to clear the arrears**. Start paying what you can afford anyway, and explain your reasons for not being able to pay more.

If your home is worth more than your total mortgage, tell your lender. An important court of appeal case, **Cheltenham & Gloucester v Norgan**, says that in this situation, a reasonable time to pay back the arrears could be the whole lifetime of the mortgage.

Don't take out an extra loan to pay your arrears

Don't be tempted to take out an extra loan to repay your mortgage arrears. Often these are very expensive, and could put your home at greater risk. Contact us for advice.

Change to a repayment mortgage

If you have an endowment mortgage, you may be able to change this to a repayment mortgage. Endowment mortgages include an insurance policy and, if you have had this policy for a few years, it may have a cash-in value (called a surrender value). Ask your lender about this and get independent financial advice on:

- whether it is a good idea to cash-in or sell your endowment policy; and
- whether changing to a repayment mortgage will reduce your monthly payments.

There are also other companies in the market who will buy insurance policies at higher rates than the cash-in value insurers will pay you. If you decide to sell and the policy is 'assigned' to your mortgage company, you must ask them to release it before you can cash it in.

If you cancel your endowment policy, ask your lender about mortgage protection insurance. This would pay the mortgage if you died.

If you do change to a repayment mortgage, you could also ask your lender to extend the mortgage term. See the next section **Increasing the mortgage term**.

Get financial advice

If you are thinking of cashing in your endowment policy, or changing to a repayment mortgage, you should always get independent financial advice. There may be a charge for this service. Contact MoneyHelper for a guide on [getting financial advice \(https://www.moneyhelper.org.uk/en/getting-help-and-advice/financial-advisers/do-you-need-a-financial-adviser\)](https://www.moneyhelper.org.uk/en/getting-help-and-advice/financial-advisers/do-you-need-a-financial-adviser). See **Useful contacts** at the end of this fact sheet.

Increasing the mortgage term

Most mortgages are spread over a number of years. This is called the mortgage term. If you have already lived in your home for several years, you could ask your lender to extend the term back to the original term, or even longer. This could cut your monthly payments.

This might be helpful if your income has dropped, you don't think it will improve and you need longer to pay back your mortgage. If you have arrears, increasing the term may mean you can afford to pay your new mortgage payment plus something towards the arrears.

If you have an endowment mortgage, increasing the mortgage term may be more difficult. Ask your lender.

Paying interest only

If you have a repayment mortgage, you could ask your lender to accept a monthly payment which covers only the interest part of your normal monthly payment. This will probably have to be a temporary arrangement.

If you already have arrears, it is likely your lender will also expect you to pay something towards them each month.

Adding the arrears to your mortgage

This is called 'capitalising' the arrears. Normally you can only do this on first mortgage arrears, and usually only if the value of your home is a lot more than the mortgage. The amount you owe in arrears is added to your total mortgage. As a result, your monthly payments will go up. Repayment of the arrears is therefore spread over the rest of your mortgage.

Your lender may be more likely to agree to capitalise the arrears if you have already kept to a repayment agreement for some months. Lenders will usually view capitalising the arrears as a last resort option.

Financial Conduct Authority (FCA) Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

Earlier we mentioned the FCA's MCOB rules. If your lender is regulated by the FCA, they will have to follow these rules. The rules can be useful to mention when trying to come to an arrangement with your lender.

The FCA rules are contained in the **Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)**. You can find this on the FCA's website, [www.fca.org.uk \(https://www.handbook.fca.org.uk/handbook/MCOB/\)](https://www.handbook.fca.org.uk/handbook/MCOB/).

As well as treating you fairly if you are in arrears, the rules say that a lender must:

- have a written policy on how to deal with customers who are in arrears;
- set up a payment plan which is practical based on your circumstances and which covers the rest of the term of your mortgage, where appropriate;
- consider all options to help you deal with your arrears and give you a reasonable period of time to consider options they suggest to you;
- make you aware of any schemes run by the Government that may help you;
- send you regular information about your arrears;
- not apply charges to your account each month where you already have an arrangement in place to repay your arrears;

- use payments you make to clear your arrears before clearing the charges that have been added to your account; and
- not put pressure on you through too many calls or letters.

Complaints

Your lender should have a complaints policy which you can use if you feel that, at any stage you have been treated unfairly. The first thing you should do is complain to the lender. There are special rules that cover how they must deal with your complaint. If you are not happy with the outcome, you can complain to the Financial Ombudsman Service, but you must have gone through your lender's complaint procedure first. You can get more information about making a complaint from the [Financial Ombudsman Service \(https://www.financial-ombudsman.org.uk/consumers/how-to-complain\)](https://www.financial-ombudsman.org.uk/consumers/how-to-complain). See **Useful contacts** at the end of this fact sheet.

Can't pay your mortgage

Many people find that because their mortgage is high, or their income has fallen, they can't pay the monthly instalments. If this becomes permanent and you think that you can no longer afford to stay in your home, you might still have some options. It is important to make sure that you are making the right choices so contact us for advice.

Disadvantages of handing back the keys

Many people find that because their mortgage is high, or their income has fallen, they can't pay the monthly instalments. If this becomes permanent and you think that you can no longer afford to stay in your home, you might be tempted to hand the keys back to your lender. For most people this is not a good idea. You might still have other options and it is important to make sure that you are making the right choices, so contact us for advice.

- If you give your home back to your lender, you will still be charged the monthly instalments on the mortgage. If you do not pay, your lender will add the instalments to the debt you owe when the house is sold. They can also add extra interest. The monthly instalments will only stop being added when your lender sells your home. This could take a long time. Your lender will probably also add solicitors' and estate agents' fees, plus any court costs.
- Your lender will probably get a lower price for the house than if you sell it yourself. It is harder to get a buyer for an empty house. Empty houses are more likely to be vandalised or damaged.
- If you give up your home and ask your council to rehouse you, they may say that you have made yourself 'intentionally (deliberately) homeless' and refuse to offer you anywhere to live. The rules are different depending on whether you live in England or Wales. Contact Shelter or contact us for advice. See **Useful contacts** at the end of this fact sheet.
- You may still be liable to pay council tax. In some cases, if the mortgage lender is treated as being in possession of the property, it may be exempt from council tax. This can be difficult to prove if you have simply handed back the keys and there is no court order. Some councils offer a discount on council tax if the property is empty. If the property is not exempt, your council doesn't offer a discount, or it's just a temporary discount, then you will be liable to pay the council tax.

There may be other options for you. For example, selling your home yourself. See the earlier section **Mortgage arrears options** and the next section **Selling and assisted voluntary sale**.

Selling and assisted voluntary sale

If you can't afford to pay off your arrears in any other way, selling your home may be the best thing to do. Some lenders are now offering an assisted voluntary sale scheme. Under these schemes, you stay in your home until it is sold. Some lenders may suspend arrears charges until the sale takes place. If your home sells for less than the mortgage, they may write off (not ask you to pay) some of the shortfall.

If you are thinking of selling your home or entering into an assisted voluntary sale, you need to think about where you will live.

- Can you trade down by selling your home and buying a smaller property?
- If you sell your home and ask your local council to rehouse you, they may say you have made yourself intentionally homeless, and refuse to offer you anywhere to live. If you can show that you had no choice but to pay

for essentials for your family, such as food and heating, rather than pay your mortgage, the council may agree to rehouse you. Contact Shelter or contact us for advice. See **Useful contacts** at the end of this fact sheet. For more information, also see our [Advice if you are worried about losing your home fact sheet](#).

- Consider renting from a housing association.
- Private renting may be an option, but you need to be careful about the type of tenancy you are offered, and how high the rent is. Sometimes, if you claim Housing Benefit, your council can decide that your rent is too high and limit the amount of benefit they will pay you.
- You may have family or friends that you can live with, at least temporarily.

The National Homelessness Advice Service has produced a useful guide called **How to exit homeownership through a voluntary or assisted voluntary sale (AVS)** (<https://tinyurl.com/NDL-FS-SG-3>).

Sale and rent back

Before agreeing to anything with a sale and rent back company, contact us for advice.

You may have seen adverts by private companies that say they will buy your home and rent it back to you. This is usually called 'sale and rent back'.

Companies that offer sale and rent back schemes must be regulated by the Financial Conduct Authority (FCA). You can contact the FCA to check that a company is **registered** (<https://register.fca.org.uk/s/>). See **Useful contacts** at the end of this fact sheet.

Because of reports of poor behaviour by some of these companies, the FCA recently investigated the situation. They looked into things like people being evicted, even though the company had told them they could stay in their home. The amounts paid to buy homes were also often less than their market value.

Quick sale companies

There are companies that specialise in buying homes from owners in financial difficulty, or who otherwise need a quick sale. The price the company pays for your home will be less than its market value. There have also been reports of very high fees and companies making misleading claims about the true value of your home. **Be careful.**

Before agreeing to anything with a company offering you a quick sale, contact us for advice.

What if my home is worth less than my mortgage?

If your home is not worth enough to repay the mortgage in full, this is known as having 'negative equity'. If you have negative equity, your options can be limited. For more information, see our [Negative equity fact sheet](#).

Under the Financial Conduct Authority's **Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)**, your lender should consider allowing you to sell your home yourself.

Some lenders may offer to help sell your home under a voluntary assisted sale scheme. Selling your home while you are still living there is likely to mean you will get a better price. See the earlier section **Selling and assisted voluntary sale** for more information.

Handing back the keys, or repossession by your lender, could mean there is not enough money from the sale of the property to pay what you owe. Your lender can ask you to pay the difference. This is known as a 'mortgage shortfall'.

Mortgage shortfalls

When you bought your home you may have made a one-off payment to your lender for insurance. This is known as a mortgage indemnity guarantee (MIG). From **31 October 2004** these became known as 'higher lending charges'. This means that if your lender repossesses and sells your home for less than you owe, they can claim the loss from the insurance company.

Make sure you check if you have any insurance, and that your mortgage company makes a claim if you do. If your insurance company makes a payment to your mortgage lender because your home was sold for less than the mortgage, they may ask you to pay them back the money. Contact us for advice.

If you have a mortgage shortfall

If you have a mortgage shortfall, you have options on how to deal with it:

- make an offer of payment, based on your personal budget; or
- ask the lender to accept a small lump sum, and write off the rest. This is sometimes called a 'full and final settlement'.

Your lender could:

- reject your offer, and take you to court to try and get you to pay more;
- if you have bought another house, ask you to agree to a legal charge on the house; or
- apply to make you bankrupt. This is only likely if you own another house.

If you are in a rented home, have no valuable goods or savings, and are on a low income, explain this to your lender or insurance company and they may agree not to take any further action.

For more information, see our [Mortgage shortfalls fact sheet](#).

Limitation Act 1980

The **Limitation Act 1980** sets out the rules on how long your lender has to take certain action against you, such as court action or bankruptcy, to recover a mortgage shortfall. The limitation period is **twelve years** for any capital owed, and **six years** for the interest part of the shortfall. If your lender has run out of time you may not have to pay the debt back. This is a complex area, contact us for advice.

Financial Conduct Authority (FCA) Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

Earlier we mentioned the FCA's MCOB rules when looking at your options for dealing with arrears. The FCA also includes rules that your lender has to follow if you have a mortgage shortfall. MCOB says that the lender must tell you within **six years** of the date of sale if they plan to recover the mortgage shortfall.

If your lender first contacts you over **six years** from the date your house was sold, contact us for advice.

Second mortgages and secured loans

You may have a second mortgage or secured loan. Even if you are paying your first mortgage in full, if you don't keep up with payments on the second mortgage, you could lose your home. Second mortgages tend to have higher interest rates than first mortgages and run for shorter periods, for example, **5 or 10 years**.

Consolidation loans

Beware of adverts in newspapers and on television offering loans to clear all your debts, often called consolidation loans. They can be very expensive and put your home at risk.

What can I do?

- If your home is worth more than your mortgage, you could ask your first lender if they can offer you a remortgage. This means giving you **one** new mortgage instead of the **two** you already have. This may be helpful as the new monthly mortgage payment should be cheaper than the **two** previous payments added together. Before signing any agreement, contact us for advice.
- You may be able to claim a loan for mortgage interest (LMI) to cover the interest on a second mortgage, but only if it was for certain home improvements. See the section **Help with mortgage payments** or contact us for advice.
- Some lenders charge very high interest rates, or have contracts that change to a higher interest rate if you miss payments. You may be able to argue this is an unfair contract term. Contact your local trading standards department. See **Useful contacts** at the end of this fact sheet.

If your second mortgage or secured loan company takes you to court, see the **Court action** section later in this fact sheet.

Universal Credit and housing costs element

If you receive Universal Credit you may be entitled to help with the interest on a loan which is secured on the property that you live in. The rules about Universal Credit can be complicated so contact us for advice.

Time orders

With some mortgages and secured loans you can apply to the court for a 'time order'. A time order is useful if you have a secured debt with a high rate of interest, and large monthly instalments that you cannot afford. The court can reduce the monthly payments, extend the term of the agreement, and even change the interest rate.

You cannot usually apply for a time order unless your lender takes court action to repossess your property. You should get detailed advice from a local advice centre, or contact us for advice before applying for a time order.

For more information, see out [Time orders for mortgages fact sheet](#)

Secured overdrafts

You may have a bank overdraft secured on your home, for example, because you have a small business. This may have high interest charges and no fixed monthly instalment to pay.

If a bank is asking you to agree to secure an overdraft on your home, contact us for advice.

If your bank takes you to court because you have missed payments on your secured overdraft, you need to get specialist advice. This is because stopping ('defending') possession action for this type of debt can be very complicated. Contact us for advice about finding help.

Court action

You cannot be evicted from your home without a court order. If you have left your home voluntarily, your lender might be able to take over the house and sell it without going to court first.

Temporary coronavirus rules

From **27 March 2020** to **20 September 2020**, the court service suspended (stayed) most possession action because of coronavirus. Extra protection was also given by the Financial Conduct Authority (FCA). Under **FCA guidance** (<https://www.fca.org.uk/consumers/mortgages-coronavirus-consumers>), lenders were able to continue with possession action, but they should not have enforced repossession before **1 April 2021** without your agreement.

Because of the coronavirus pandemic, several temporary changes were also made to the court possession process. Many of these temporary changes have now ended.

The information about court action given in this fact sheet covers claims issued from **1 December 2021** onwards.

Other rules may apply for claims issued before **1 December 2021**. If before this date you were issued with a new claim or your lender asked the court to restart an existing case that had previously been stayed because of coronavirus, contact us for advice.

Mortgage pre-action protocol

The pre-action protocol makes it clear that lenders and borrowers should act fairly and reasonably with each other and, if possible, reach an agreement so that court action for mortgage arrears is not necessary. If there is a possession hearing, the court should take account of the protocol, and how lenders and borrowers have behaved, before deciding what action to take.

- It applies to residential first and second mortgages.
- If your lender takes you to court, they must complete a checklist to confirm that they have followed the protocol. If they haven't, they must provide the court with clear reasons why not. At the court hearing, your lender must give a copy of the checklist to the District Judge, and a copy to you.

You can see a copy of the mortgage pre-action protocol at www.justice.gov.uk (<https://tinyurl.com/NDL-FS-SG-4>). If your lender takes court action, make sure they are following the mortgage pre-action protocol.

Before court action

These are the usual stages leading to action in the County Court.

- The lender will write asking you to pay your arrears. If you have not already contacted your lender, do so now and try to reach an agreement. See **Mortgage arrears options** earlier in this fact sheet.
- If you don't contact your lender to make an agreement, they will write again. They may pass the matter to their solicitor, who will write to you. They will sometimes send a 'default notice'. This is a formal request for you to pay what you owe.
- You should respond, and try to negotiate a way to pay the arrears. If your offer is rejected by the solicitor, you can insist they tell your lender about your offer. You could try to contact the lender's head office directly to reach an agreement. Even if your offer is refused, start paying what you have offered.

Court papers

If you do not reach an agreement, the lender can apply to your local County Court to issue a 'possession claim'. You will usually get papers through the post, giving you a date and a time for your possession hearing. You should have at least **four weeks'** notice of the hearing.

The papers include:

- a **claim form N5** (<https://www.gov.uk/government/publications/form-n5-claim-form-for-possession-of-property>) that tells you which court is dealing with your case;
- a **particulars of claim form N120** (<https://www.gov.uk/government/publications/form-n120-particulars-of-claim-mortgaged-residential-premises>), which sets out your lender's case for taking possession of your home; and
- a **defence form N11M** (<https://www.gov.uk/government/publications/form-n11m-defence-form-mortgaged-residential-premises>), which you should fill in and send back to the court within **14 days** of getting it.

Until **30 June 2022**, if the lender applied to court to issue a 'possession claim', they also needed to tell the court what they knew about the effect of the coronavirus pandemic on you and your dependants. Your lender also had to give you a copy of the notice that included this information at least **14 days** before your hearing. This temporary rule has now ended.

Filling in the defence form (N11M)

It is important to fill in the defence form. You can give the court a full picture of your finances and what you can afford to pay. It is also your chance to tell the court if you disagree with the amount your lender says you owe.

- Check the details of your lender's claim to see if you agree with them. Say if you think the information is wrong.
- You will be asked how much you can afford to pay towards the arrears. Use your personal budget to work this out. It is important that the offer you make is realistic. If you want to discuss your personal budget, contact us for advice.
- Put down an amount on the form which you can afford, even if your lender has already refused this offer.
- You have a chance to explain to the court why you have got into arrears.
- Tell the court if you think your circumstances will improve, or if you want time to sell your home yourself.
- If you feel your lender has not followed the mortgage pre-action protocol, tell the court why.
- It is still worth sending back your completed defence form, even if more than **14 days** has passed since you got it. Remember to take a copy with you to the hearing.

Possession claim online

Your lender may issue their claim using the online service Possession claim online (PCOL). You can also fill in forms online at www.possessionclaim.gov.uk/pcol/ (<https://www.possessionclaim.gov.uk/pcol/>). Contact us for advice if you are replying online.

Time orders

Make sure you get advice about whether you can apply for a time order. You can ask for a time order on your defence form. The advice in this section, **Filling in the defence form (N11M)**, may not apply if you do decide to apply for a time order.

The hearing

Start paying the amount you have offered as soon as possible. You can still try to reach an agreement with your lender or their solicitor. This may mean the hearing is put off ('adjourned') to give the agreement time to work.

If the hearing has not been adjourned, you must go to the hearing even if you have made an agreement with your lender.

If you cannot go to the hearing because of illness or disability, write to the court to explain your circumstances. Ask if a relative or friend can go instead of you. **Don't forget to include the case number in the letter.** You will find this on the court form.

The hearing is to decide what is fair to both sides, not to find anyone guilty or innocent.

This kind of hearing should be dealt with in private, with only you, the lender or their representative and the District Judge in the room. The District Judge is the person who will decide your case. Call them 'Sir' or 'Madam'.

Eviction

Even if the court decides you cannot afford to stay in your home, you will not be evicted from your home on the date of the hearing.

When you go to court

Below is some guidance for what to do before, and at, your court hearing. If you are worried about going to court, or have any questions, contact us for advice.

- Make short notes about what you want to say at the hearing. Take these with you, and don't be afraid to use them when talking to the District Judge.
- If your circumstances have changed since you filled in the defence **form N11M** (<https://tinyurl.com/NDL-FS-CFI-4>), do a new personal budget.
- Take **three copies** of your budget with you. One for you, one for the District Judge and one for your lender.
- If English is not your first language, you could take an interpreter with you.
- Your lender will probably send a representative to court. They may approach you in the waiting room. Don't be afraid to speak to them before the hearing to see if you can come to an agreement. You should still attend the hearing.
- Don't be pressured into offering more than you can afford. The District Judge may agree to an amount that is less than the lender or their representative is asking for.
- Make sure you are given a copy of your lender's pre-action protocol checklist. Check it, and tell the District Judge if you do not agree with any of the information. See the **Court action** section earlier in this fact sheet.
- Answer questions clearly, calmly and as fully as you can. You have as much right to explain your case as the lender has.

Court duty-desk schemes

Court desk schemes provide free legal advice and representation in possession cases at court. If a duty-desk scheme is available at your court, and you have not already had detailed advice, you should use it.

What should I ask for?

- If you can pay off all the arrears in a short time, for example through a remortgage, ask for an 'adjournment'.
- If you don't agree with the arrears figure, ask for an 'adjournment' so that the lender can provide a detailed statement of your account.
- If you agree with the arrears figure, make an offer of repayment that you can afford. The District Judge will usually expect you to be able to pay the arrears off in a 'reasonable period'. Depending on your situation, it may be reasonable to pay off the arrears over the time you have left on your mortgage.
- You can ask the court for an 'adjournment' based on an offer of repayment, even if this will take you a long time to pay off the arrears.
- If the District Judge thinks your offer is reasonable, they may agree to an 'adjournment' on terms of payment, or instead make a 'possession order', which is suspended on terms of payment. The terms are usually where you agree to pay your normal monthly mortgage payment and an amount to clear the arrears. If you keep to these payments, the lender can take no further action.
- If your arrears will take a long time to pay off, explain why to the District Judge. Use your budget sheet as evidence. Don't be afraid to point out the court of appeal case **Cheltenham & Gloucester v Norgan**, which said that the whole lifetime of the mortgage may be a reasonable period to pay the arrears. You must normally have equity in your home.

Costs

Watch out for extra costs being added on for each hearing. You may be able to ask the District Judge to order that the lender pays their own costs. You can ask for this if their figures are wrong, or if they have not followed correct procedures and your hearing has to be adjourned, or if they have not followed the pre-action protocol. Contact us for advice.

What if the court does not accept my offer?

If the court does not accept your offer, you could ask for an 'adjournment' to give you time to sell your home yourself. You will need to show evidence that you have put the house up for sale, such as a letter from an estate agent. This may be better than the lender repossessing and selling the house, as repossessed houses can often sell for less than their market value.

If the district judge won't make an 'adjournment' to give you time to sell, you can still ask for them to 'postpone the possession' order for a longer period, for example, **three months**. This may give you time to sell the house yourself and find somewhere else to live.

If the court will not postpone the possession order, this usually means you will have a set period of **four weeks** before your lender can apply to the court to evict you from your home. If this happens, you can ask the court for longer to give you time to find somewhere else to live.

Getting rehoused

Before putting your house up for sale, you should get some advice about being rehoused. Your local council may not have a duty to provide housing for you, if they think you made yourself 'intentionally homeless' by selling your home. The council will also consider other factors such as whether you are in priority need. Contact Shelter or contact us for advice. See **Useful contacts** at the end of this fact sheet.

What if I can't pay the order made by the court?

If at any time, you find you cannot pay the amount which the court has ordered, you should go back to the court and ask for the order to be changed. Use the 'general application' **form N244** (<https://tinyurl.com/NDL-FS-CFI-5>). You can find most court forms on the court service website. Go to www.gov.uk (<https://www.gov.uk/government/collections/county-court-forms>) and search for 'County court forms'.

There will be a fee to pay to make this application. If you are on benefits or a low income, you may not have to pay the fee, or you may get a discount. Contact us for advice.

How to stop an eviction

The court will **not** take action to evict you, unless asked to by your lender.

If the courts granted you an adjournment, your creditor will have to apply for a possession order before they can ask the courts for eviction. If the creditor applies for a possession order, there will be a hearing.

Contact your lender straight away if:

- you have not kept up with payments under a suspended possession order; or
- the time period given on your possession order has run out.

Try to make an arrangement with your lender. If you cannot reach an agreement, your lender can apply to the court for a 'warrant of possession'. You should be given a 'notice of eviction' by the court bailiffs, giving you a date and time that they will come to evict (remove) you from your home. **You may be able to stop this happening, but you must act quickly.**

If you need more time to sell, to find somewhere else to live, or you want to make another offer to pay the arrears, you should apply for the 'warrant to be suspended'. This is done on court **form N244** (<https://tinyurl.com/NDL-FS-CFI-5>).

High court action

If your lender has asked for your case to be transferred to the High Court, contact us for advice straightaway.

How to fill in an N244

You need to get your completed form to court as soon as possible, to allow time for the court to arrange a hearing.

If you are making a new offer to pay your arrears, make sure you don't offer more than you can afford. Work out a new budget sheet and send a copy with the **N244** (<https://tinyurl.com/NDL-FS-CFI-5>).

- Include the claim number of the case, and details of your lender.
- **Question 1** Fill in your name here.
- **Question 2** You will normally tick the box that says 'defendant'.
- **Question 3** You need to explain here what order you are asking the court to make, and your reasons for requesting it. You should also explain why you have not been able to pay, and any new offer of payment.
- **Question 4** This asks if you have attached a draft of the order you are applying for. We would suggest that you only tick 'yes' if you have had help from a solicitor or advice agency with drafting it.
- **Question 5** This asks if you want to have the application dealt with at a hearing. Most applications will be dealt with at a hearing, so tick 'yes'.
- **Questions 6, 7 and 8** It is safer to leave these blank, rather than guess how long a hearing will last, or what level of judge you need.
- **Question 9** Only fill this question in if there is someone you want the court to send a copy of the application to, such as a solicitor.
- **Question 10** You should tick the box to explain what evidence you will be relying on to support your case. If you are going to court on your own, tick the box saying you are relying on 'the evidence set out in the box below'.

Include any evidence you have to support your case and any information you have about your possible defence. Give reasons if your application has been delayed.

There will be a fee to pay to make this application. If you are on benefits or on a low income, you may not have to pay the fee, or you may get a discount. Contact us for advice.

What you can ask the court to do

When you fill in the N244, you should explain what you want the court to do. You can ask the court to suspend the warrant of possession for the following reasons:

- to ask the court to give you more time to sell;
- to ask the court to give you more time to find somewhere else to live; or
- to make a new offer of payment on your arrears.

You will also need to

- sign the statement of truth at the bottom of the form;
- keep a copy of the form for yourself; and
- send the form back to the court.

Act quickly

Make your application as far ahead of your eviction date as possible, and ideally at least **three days** in advance. If your application is refused, contact Shelter or contact us for advice.

What happens next

The court will set a date for a hearing, usually before the eviction date. **You must go to this hearing or the court is unlikely to suspend the warrant.**

If any further warrants are issued, you may still be able to ask the court to suspend them, for example, to give you time to find somewhere else to live.

If the court refuses your application to suspend the warrant, your eviction will go ahead. If this happens to you, contact Shelter or contact us for advice.

Try to move out before the eviction date, because the bailiffs can force their way in if they have to and change the locks. If your furniture and possessions have not been removed by the time of the eviction, you should make arrangements for their removal with your lender. This should usually be within **two weeks** of the eviction.

If you are finding it difficult to access the property after eviction has taken place, contact Shelter for advice. See **Useful contacts** at the end of this fact sheet.

After the eviction

After you have been evicted, your lender will still add interest to your mortgage account until the property is sold.

- They must follow Financial Conduct Authority (FCA) rules and sell your home for the best price that might reasonably be paid, taking into account things like house market conditions. However, sale prices obtained by lenders are often less than if you had sold the house yourself.
- Your lender must use the money from the sale to pay off the court costs, estate agent's and solicitor's bills, the mortgage and any second or third mortgages.
- The lender must tell you in writing how the money has been spent.
- They must send you any money which is left over, so remember to give them your new address.

Order of payment

Mortgages are paid off in the order you took them out. If selling your home does not raise enough money to repay the first mortgage, and any other mortgages, plus all the costs, you may still owe some money to the lender. See **What if my home is worth less than the mortgage?** earlier in this fact sheet. Your lender could take court action against you to collect the rest of the debt. Contact us for advice.

Complaints

If you think you have been treated unfairly by your lender, you may be able to complain. You should follow your lender's complaints procedure first. If you are still not happy, you could take your case to the **Financial Ombudsman Service (FOS)** (<https://www.financial-ombudsman.org.uk/consumers/how-to-complain>). You can get more information about making a complaint from the FOS website. See the next section **Useful contacts**.

Useful contacts

Financial Conduct Authority Phone: 0800 111 6768 or 0300 500 8082 www.fca.org.uk (<https://www.fca.org.uk/>)

Financial Ombudsman Service Phone: 0800 023 4567 or 0300 123 9123 Email: complaint.info@financial-ombudsman.org.uk www.financial-ombudsman.org.uk <https://www.financial-ombudsman.org.uk/>

MoneyHelper Phone: 0800 138 7777 (English), 0800 138 0555 (Welsh) www.moneyhelper.org.uk (<https://www.moneyhelper.org.uk/en>)

Shelter You can get further advice from www.shelter.org.uk (<https://www.shelter.org.uk/>), or a local Shelter advice service. If you have nowhere to sleep tonight, are at risk of harm or losing your home within the next two months, call Shelter Helpline on 0808 800 4444 for advice and information on your options.

Shelter Cymru For expert housing advice if you live in Wales Phone: 0800 049 5495 www.sheltercymru.org.uk (<https://sheltercymru.org.uk/>)

Trading Standards Search for your local office on the GOV.UK website at www.gov.uk/find-local-trading-standards-office (<https://www.gov.uk/find-local-trading-standards-office>)

Other fact sheets that may help you

[Advice if you are worried about losing your home fact sheet](#)

[Coronavirus advice and support fact sheet](#)

[Full and final settlement offers fact sheet](#)

[Mortgage shortfalls fact sheet](#)

[Negative equity fact sheet](#)

[Time orders for mortgages fact sheet](#)



NHAS
National Homelessness Advice Service