



## South Hams District Council

Follaton House, Plymouth Road, Totnes TQ9 5NE

Tel: 01803 861234

Fax: 01803 861479

E Mail: [housing.advice@southhams.gov.uk](mailto:housing.advice@southhams.gov.uk)

## **Mortgage Arrears Advice Guide**

## Contents

<b>Where to start</b>	<b>2</b>
<b>Options for clearing your arrears</b>	<b>3</b>
<b>Secured loans</b>	<b>6</b>
<b>Dealing with debts</b>	<b>7</b>
<b>Claiming benefits and Tax Credits</b>	<b>10</b>
<b>Completing a financial statement</b>	<b>13</b>
<b>Court Proceedings</b>	<b>16</b>
<b>Your rights as a borrower</b>	<b>19</b>
<b>Sources of Advice and Support</b>	<b>21</b>

## WHERE TO START?

If you are in mortgage arrears or are having difficulty making your mortgage payments you should contact your lender as soon as possible. The earlier you speak to your lender, the more options you are likely to have and if your lender knows you are trying to stop any debt increasing, they may allow you more time to sort the problems out.

To prepare for an appointment with your lender, you should consider the following:

- Your mortgage is your most important debt and must be paid above all other debts. If you have already made agreements with other creditors, you should contact the CAB or other independent advisor with a view to re-negotiating the payments.
- Find out if you are entitled to any benefits or tax credits. You can do this by contacting the CAB or other independent advisor or get advice online via one of the useful websites included in this pack.
- Check to see if you can claim on any mortgage protection insurance you may have.
- Check your mortgage agreement – you may be able to reduce your payments in the short-term or re-negotiate the terms.
- Consider whether the problems causing the mortgage arrears are long-term or short-term.
- Obtain a property valuation because if you have equity in your home then you may have more options when you negotiate with your lender.
- Prepare a financial statement calculating your total monthly income and expenditure and include all your other debts. You should show that you are prioritising your mortgage payments and have taken steps to reduce your outgoings.
- You could consider other ways to increase your income e.g. taking in a lodger or asking grown-up children to contribute to the household income.
- You should not borrow money to pay off other debts or deal with private companies who offer to repay all your debts in return for a monthly payment. In order to deal with your debts you should get advice from the CAB or other independent advisor.
- Do not hand back the keys to your property because you will remain liable for the arrears and costs until the property is sold. The council may decide that you have made yourself intentionally homeless and will not have a duty to re-house you.

## OPTIONS FOR CLEARING YOUR ARREARS

Your options for clearing your arrears depend on:

- How the arrears arose in the first place
- What kind of mortgage you have
- How short or long term the remedy needs to be
- How much available income you have
- How much longer your mortgage has to run

After completing a financial statement you should consider the following options:

### **Increase your monthly payments**

A good option is to pay an extra amount towards your arrears each month on top of your regular monthly payments. Your lender will want to see your financial statement before agreeing a repayment plan and most lenders want the arrears cleared within 2 years. If you cannot afford to clear the arrears within 2 years, your lender may refer the case to court in order to obtain a suspended possession order.

### **Capitalising the arrears**

You could arrange to have the arrears added to your mortgage and paid back over the remaining term of the loan. This will increase your monthly payments in line with the amount of capital you are adding. You could look at this option alongside the possibility of extending the mortgage term which would mean that your arrears are paid off but your monthly payment does not rise.

### **Extending your mortgage period**

If you have been paying off your mortgage for a number of years, you could ask your lender to extend your mortgage resulting in lower and more affordable repayments. Most mortgage terms are for a period of 20 to 25 years and some lenders will extend the term up to 35 years. Your lender will consider the following:

- The amount of the arrears
- Your age and expected retirement age
- Your employment
- How much longer your current mortgage has to run

If you have an interest only mortgage and are making payments into an Endowment Policy, you could reduce the payments on the policy. However any changes to an Endowment Policy can be complicated and **you should always seek independent financial advice before taking any action.**

### **Payment holidays - Interest only mortgages**

As a short-term measure you could stop paying either the mortgage interest or the endowment for a specified time. This is only likely to be agreed if your problems are temporary and you would need to make up the missed payments.

You could consider selling your endowment policy which will reduce the amount of the loan and the monthly payments but you would need to make other financial arrangements to pay off the remainder of the capital. **Again you should always seek independent financial advice before considering this option.**

Another option is to change to a repayment mortgage and surrender your endowment policy. **This is a major step to take and you should always seek independent financial advice before considering this option.**

### **Payment Holidays - Repayment mortgages**

You could suspend repayment of the capital and make interest only payments. If you can continue to make your existing mortgage payments you could ask for a delay in paying off the arrears for a specific period of time. The lender is only likely to agree to this if the problems are short-term.

### **Changing your Mortgage**

You could find a cheaper mortgage deal with another lender. You may have to pay charges for changing your mortgage lender and would still have to pay off your arrears. Go to [www.moneyadvice.service.org.uk](http://www.moneyadvice.service.org.uk) for further information.

### **Selling your Home**

If you cannot find a way of clearing your arrears, you could consider selling the property rather than waiting to be evicted. This is because your lender is likely to get less for it than you would, leaving you with a debt to pay. However you should get advice from the CAB or other independent advisor before taking this course of action. If you become homeless, the council may not have a duty to house you and private rented accommodation may be more expensive than your mortgage.

You should not just leave the property and hand back the keys to your lender unless you have sold the property or there is a court order to evict you. This is because you will still be responsible for the mortgage and arrears and it could affect your future options.

### **Sale and Rent Back Schemes**

Sale and rent back schemes offered by private companies are not recommended. They usually offer to buy back the property at below the market value and rent it back to you. You would have no control over the level of rent you pay which could be increased every six months. Please seek advice from shelter, CAB or local housing advice offices before considering these schemes. You may not be entitled to Housing Benefit for 5 years for a property you used to pay a mortgage for unless you can show you had no alternative but to sell it.

### **Mortgage Rescue Schemes**

Mortgage rescue schemes run by private companies are not recommended. However, the Government has a mortgage rescue scheme designed to help vulnerable homeowners.

This Scheme is extremely limited and is only considered as a last resort and then only in exceptional circumstances

Your local authority will need to carry out a detailed assessment to decide whether or not you are eligible and whether your case is a priority for this scheme.

If you wish to apply for a mortgage rescue, you should contact a Housing Options Officer on 01803 861260.

### **Help with your mortgage payments**

If you are claiming Income Support, Income-Based JSA, Income-Based ESA or Pension Credit Guarantee, you could be entitled to help with your mortgage interest payments.

- This help would only cover the interest payments and, if you have an interest only mortgage, you cannot get help to cover the endowment policy
- You can only get help with mortgage interest payments on the first £200,000 of your mortgage (£100,000 if making a new claim for Pension Credit Guarantee)
- You will normally only get help after 13 weeks because the government expects borrowers to have taken out mortgage protection insurance and any mortgage interest payments awarded are usually paid direct to your mortgage lender by the Department of Works and Pensions
- If you, or your partner, are claiming Pension Credit Guarantee, you can get help immediately.
- The amount of mortgage interest paid may not cover all your interest payments because it is based on the Bank of England's base rate.
- If you are claiming JSA, you may be limited to 2 years help with your mortgage

You may also be able to get help if you are liable for other costs, such as ground rent or service charges although not all of these costs are eligible so you should get advice.

If the mortgage is in someone else's name the DWP will decide if it considers it reasonable for you to pay the mortgage in order to keep your home

You cannot get help to cover interest payments on a second mortgage or secured loan unless it was used for certain improvements such as disabled adaptations.

You should get advice from the CAB or other independent advisor to find out whether you are eligible for help with your mortgage payments.

### **Repossession Prevention Fund**

Local Authorities may have limited funds to assist people facing repossession who do not qualify for other schemes. For further information contact your local Housing Advice team at South Hams District Council on 01803 861260.

## SECURED LOANS

If you have a second mortgage or secured loan against your property and are having financial difficulties, this must be treated with the same priority as your original mortgage. You should contact the lender and try to negotiate a repayment plan.

You may be paying your mortgage in full, but you will face repossession if you do not keep up with secured loan payments.

- If you have no arrears on your mortgage and you have equity in the property, you could ask your lender if they would be willing to offer you a re-mortgage. This means taking out a new mortgage to cover both the debts which should be cheaper than the two previous payments added together
- If the secured loan was for certain home improvements and you are in receipt of Income Support or JSA, you may be able to claim benefit to cover the interest.
- If you are in negative equity or the lender is charging you higher interest because you have missed some payments, you should get advice from the CAB or other independent advisor.

### Time Order

If your lender takes you to court, you could apply for a Time Order which fixes the payments at an affordable level for a specified time. The options available to the court include:

- Reducing the monthly payments for a temporary period
- Extending the term of the loan
- Temporarily changing the rate of interest

The court will only consider making a time order if the amount you borrowed is less than £15,000 (for loans taken out before 1 May 1998) or £25,000 for loans taken out after that date **and** the lender has issued a default notice.

### Debt Relief Schemes

Some private companies offer to take over all your debts for a monthly fee. Many of these debts may be credit debts and your home is not at risk if you fall behind with these payments. However most of these companies secure their loan against your property which means the loan company can repossess your home if you do not keep to the monthly payments. These schemes are not recommended and you should seek advice from the CAB or other independent debt adviser if you are unsure about how to deal with your debts.

## DEALING WITH DEBTS

### Priority Debts

When you have come to an agreement with your mortgage lender, you should identify your priority debts. These include the following:

- Mortgage arrears
- Secured loan arrears
- Council Tax arrears
- Utility arrears
- Court fines
- Hire purchase arrears
- Maintenance payment arrears
- Income Tax, National Insurance and VAT arrears
- TV licence arrears
- Benefit and tax credit overpayments

You should then refer to your financial statement and decide what payments you can afford, having regard to any action that is being taken against you. You should obtain advice from the CAB or other independent advisor if you are being threatened with any of the following:

- Court proceedings
- Disconnection of services
- Bankruptcy proceedings
- Imprisonment
- Bailiffs
- Enforced deduction from wages or benefits
- Repossession of essential items

It is important that you only offer payments that you can afford because if you miss payments, the creditor is likely to take further action against you. If your offer is not accepted, you could send a copy of your financial statement or get independent advice.

If your outgoings exceed your income you should seek advice from the CAB or other independent advisor and you should also check whether:

- You are getting all the benefits and tax credits you are entitled to
- Your bills are being spread out over the year
- Are there any more expenses you can reduce
- All household members are contributing to the household income

### Credit Debts

Credit debts include:

- Credit cards
- Bank loans and overdrafts which are unsecured
- Store cards
- Catalogue debts
- Loans from friends and family

These are not as important as priority debts because the creditors do not have the same powers to recover the debts. They can, however, go to court and register a charge against your property which means you would have to pay the debt when the property sold. It is also possible for creditors to make people bankrupt which could lead to the loss of your home. These debts should therefore be considered and affordable payments offered.

List your credit debts in order of size and apportion any income you can spare according to the size of the debt. If you need help with this, you should get advice from the CAB or other independent debt advisor.

If you do not have enough income to pay your credit debts, you should contact your creditors and offer to make a nominal payment of £1 per month for a fixed period of, say, 6 months after which time the situation could be reviewed. You could also request that the interest and charges are frozen until your financial circumstances are reviewed to prevent the debt increasing over time.

The CAB and National Debt Helpline have copies of sample letters that can be used on their websites.

If your offer is refused by the creditor or they are unwilling to freeze the interest and charges, you should start paying the amount offered anyway and seek advice from the CAB or other independent debt advisor.

### **Debt Management Plan**

There are a number of these companies that will negotiate with your creditors. Many of these charge you a fee for doing so. There are other companies that offer the same service for no fee, e.g. National Debtline, Payplan, Consumer Credit Counselling Service.

A Debt Management Plan is an affordable repayment programme set up by a debt management company.

- They help you work out what you can afford to pay each month.
- You pay this amount to the debt management company.
- The debt management company pays your money to all your creditors for you.

### **How does it work?**

First you need to put together a personal budget sheet to see whether you have enough disposable income. Add up all your household income, then add up all your essential expenses, like rent, mortgage, household bills, food, travel, child care.

Take the second figure from the first.

What you have left over is your disposable income.

If your disposable income is £100 or more, a Debt Management Plan might be a good option for you.

There are a number of these companies that will negotiate with your creditors. Many of these charge you a fee for doing so and this comes off the amount you pay, so your debt takes longer to pay off.

There are some companies that offer the same service for no fee. Please speak to the CAB or other independent advisor before entering into these plans

### **Individual Voluntary Arrangements**

An IVA is a formal legally-binding agreement arranged by an Insolvency Practitioner, whereby you agree to repay a proportion of your debts, usually over 5 years, after which you will be discharged from your liabilities. It can be a useful alternative to bankruptcy, as you should be allowed to keep your home. Sometimes an extra loan is taken out against your house in the final year to repay some of your debts as well. You will have to pay a fee to the Insolvency Practitioner.

## CLAIMING BENEFIT AND TAX CREDITS

### What to do if you lose your job

You should apply straightaway for any benefits or tax credits you may be eligible for because you are only likely to be paid from the date of your claim and some means tested benefits entitle you to help with your mortgage payments after 13 weeks.

You should register your claim for benefit by calling Jobcentre Plus on 0800 055 6688.

### Jobseekers Allowance

You may be eligible for JSA if you are unemployed and available for work. There are two types of JSA as follows:

- **Contribution based** – this is not means tested and is awarded if you have paid the required amount of National Insurance Contributions. It is only awarded for a period of 6 months at which time you would have to apply for means tested Jobseekers Allowance. Contribution based JSA will not automatically entitle you to other benefits.
- **Income based** – this is awarded if you have not paid the required number of National Insurance contributions or if you are including other household members on your claim. All household income is taken into account and any savings above £6,000. If you are awarded Income Based JSA, you will be entitled to full Council Tax Benefit immediately and Support Mortgage Interest payments after 13 weeks.

### Employment and Support Allowance

ESA is a benefit paid to people who are unable to work due to illness or disability and is paid by the Department for Work and Pensions. To claim ESA telephone 0800 055 6688 or you can claim online at [www.dwp.gov.uk](http://www.dwp.gov.uk).

When you first make a claim for ESA there will be a Work Capability Assessment which is a 13 week assessment phase when healthcare professionals will assess how your illness or disability affects your ability to work. You are likely to be asked to attend a local health centre for a medical assessment which you must attend.

During the assessment period you will receive the same level of benefits as Jobseekers Allowance. At the end of 13 weeks a decision on your eligibility for ESA will be made. If you are not eligible, you will be invited to apply for JSA. You can ask for a decision to be reviewed within one month of the date of the decision letter and should seek independent benefits advice.

Most people receiving ESA are placed in the Work Related Activity Group and will be expected to attend work focussed interviews and have access to a personal adviser who will offer advice on employment and training.

You can find further information and advice on claiming ESA at [www.direct.gov.uk](http://www.direct.gov.uk) or [www.adviceguide.org.uk](http://www.adviceguide.org.uk)

## **Disability Living Allowance and Attendance Allowance**

You may be entitled to Disability Living Allowance if:

- You have a physical or mental disability
- You need help caring for yourself and/or have walking difficulties
- You are under 65 when you claim

If you are aged 65 or over and have a long term illness or disability, you can apply for Attendance Allowance which is based on care needs only.

Neither of these benefits is means tested and they will not reduce any other benefits you receive, but in some circumstances they could increase them. You may find it helpful to get assistance from the CAB or a support worker with completing your claim form.

For a claim pack or for further information call the Benefit Enquiry Line on 0800 882200, or go to [www.direct.gov.uk](http://www.direct.gov.uk).

## **Carer's Allowance**

If you look after someone who receives the Disability Living Allowance Care Component at the middle or higher rate, or Attendance Allowance, you may be able to claim Carers Allowance. You must be aged 16 or over and providing at least 35 hours per week of care. You cannot receive Carers Allowance if you are a full-time student, or working and earning more than the 'earnings limit' (currently £100 per week, although some earnings can be ignored).

In some cases, you may not receive Carers Allowance because you already receive another benefit. However, it can still be worth applying as an 'underlying entitlement' to Carers Allowance could increase the amount you receive in other benefits, for instance Income Support or Council Tax Benefit. Please contact The Citizens Advice Bureau for further advice, as in certain limited circumstances your receipt of Carers Allowance could actually reduce the benefit of the person you are caring for.

To claim Carers Allowance, you can either telephone for a claim form on 0845 608 43231 or 0800 882200 or you can claim online at [www.direct.gov.uk](http://www.direct.gov.uk)

## **Income Support**

Income Support is a means tested benefit so all household income and savings above £6,000 are taken into account. If you qualify for Income Support you will also be entitled to other benefits including full Council Tax benefit, Support Mortgage Interest and free prescriptions. In order to claim Income Support, you should contact Jobcentre Plus.

## **Council Tax Benefit**

You may get Council Tax Benefit if you pay Council Tax and your income and capital are below a certain level. You can apply whether you rent or own your home and you could qualify whether you are working or in receipt of benefits. The amount you will receive depends on your household income and your personal family circumstances. If you have a shared ownership property, you could be eligible for Housing Benefit to help with the rent payments. If you claim for Housing Benefit you will also automatically be considered for

Council Tax Benefit. To apply you should ring your local council and will need to provide proof of your income and any benefits you receive.

### **Working Tax Credit and Child Tax Credit**

Working Tax Credit is based on the hours you work and you can claim whether you are an employee or self-employed.

Child Tax Credit is paid to you if you are responsible for at least one child or young person who normally lives with you. You do not have to be working to claim Child Tax Credit.

The amount of tax credit you get depends on:

- The number of children living with you
- If you live with someone as a couple
- Whether you work
- How many hours you work
- If you pay for childcare
- If you or any child living with you has a disability
- If you are aged 50 or over and are coming off benefits
- The amount of your income

For further information about Working Tax Credit and Child Tax Credit, ring the Tax Credit Helpline on 0845 3003900 or you can check your entitlement on [www.hmrc.gov.uk](http://www.hmrc.gov.uk).

### **Pension Credit**

If you have reached the minimum qualifying age for state pension, you may be entitled to Guarantee Pension Credit which tops up your weekly income to a guaranteed minimum figure. If you are aged 65 or over, you may also be entitled to Savings Pension Credit. To make a claim you should contact The Pension Service on 0800 99 1234. If you receive Guarantee Pension Credit, you will be eligible for full Housing and Council Tax Benefits, or help with your mortgage.

## COMPLETING A FINANCIAL STATEMENT

The starting point for dealing with debts is to prepare a Financial Statement. This helps you to assess your current situation and show the options that are available to you. A copy of the statement can be sent to your creditors to explain why you are in financial difficulty and negotiate reduced payments.

1. You should gather your most up-to-date income details as well as bills and statements and **start by calculating your total monthly income**. If you are paid weekly, multiply your total weekly income by 52 and divide by 12 to give you the monthly figure.
2. **Identify your priority bills** and work out the monthly costs for the following:
  - Mortgage and secured loans
  - Council Tax
  - Gas/Electricity/Oil
  - Maintenance payments
  - Income Tax/National Insurance/VAT
  - Water
  - TV Licence
  - HP agreements
  - Telephone and mobile phones
  - Childcare costs
3. **Work out your monthly food and household costs** as itemised in the financial statement. You should show that you are budgeting to try and meet your payments and the following figures are a budgeting guide for food and general household items:
  - Single person    £152 to £195 per month
  - Couple            £260 to £325 per month
  - Each child        £87 to £152 per month

Car expenses should include fuel, insurance, tax and something towards the MOT and general maintenance.
4. **Identify your priority debts**. These are your most important debts. Failure to pay them could result in the loss of your home, disconnection of essential services or imprisonment. You should also include any court fines or benefit/tax credit overpayments you are currently repaying.
5. **List your Credit Debts** so that you have a complete picture of your financial circumstances. You should not pay any of these debts until you have agreed a repayment plan with your mortgage lender and other priority creditors. Credit debts include:
  - Credit and store cards
  - Catalogue payments
  - Bank overdrafts and loans (if they are not secured against your property)
  - HP agreements (if the items are not for work or essential household items)
  - Benefit overpayments if you are not currently receiving benefits
  - Money owed to friends and family

6. When you have calculated your monthly income, priority bills and household expenditure, you should be able to see how your money is being spent and where you can make savings.
7. If you do not have enough income to cover your essential bills, household expenditure and pay your priority debts, you should:
  - Go through the financial statement to see whether any other expenditure can be reduced
  - Ensure you are not paying any credit debts instead of your priority debts
  - Make sure you are getting all the tax credits and benefits you may be entitled to
  - If you or any member of your family has a long-term illness or disability, find out whether you are entitled to Disability Living Allowance, Attendance Allowance or Carer's Allowance
8. You could look at ways of increasing your income:
  - Ask adult children to increase their contribution to the household income
  - Consider taking in a lodger
  - Could you find additional work/take advantage of any overtime
  - If you receive maintenance payments, could these be increased?
  - Are there any charities you could apply to?
  - Contact utility companies to see if they have any special assistance funds that can offer grants to families in financial difficult.

If you need assistance completing your financial statement you should contact the CAB or other independent advisor.

**FINANCIAL STATEMENT**

Name: \_\_\_\_\_

No of people in household: \_\_\_\_\_

Address: \_\_\_\_\_

	<b>MONTHLY INCOME</b>
Wages/salary	
Partners wage/salary	
Working Tax Credit	
Child Tax Credit	
Child Benefit	
Housing Benefit	
Council Tax Benefit	
Jobseeker's Allowance	
Income Support/Pension Credit	
Incapacity Benefit	
Disability Living Allowance	
Attendance Allowance	
Carer's Allowance	
Maintenance	
Retirement Pension	
Other 1	
Other 2	
<b>TOTAL INCOME</b>	

	<b>PRIORITY DEBTS</b>	
	Balance owed	Monthly offer of repayment
Mortgage arrears		
2nd Mortgage arrears		
Rent arrears		
Council Tax		
Fuel Debts: Gas		
Electricity		
Water charges		
Court fine		
Maintenance arrears		
Social Fund loan		
Benefit overpayments		
Hire Purchase arrears		
Other 1		
Other 2		
Other 3		
Other 4		
<b>TOTAL PRIORITY DEBTS REPAYMENTS</b>		

	<b>MONTHLY EXPENDITURE</b>
Mortgage	
Rent	
Council Tax	
Water Rates	
Gas/Oil/Coal	
Electricity	
TV Licence	
Satellite/Cable television etc	
Telephone	
Mobile	
Maintenance payments	
Food/Housekeeping	
School Meals	
Pocket money	
Newspapers/magazines	
Entertainment	
Home/contents insurance	
Life Assurance/Savings plan	
Pets	
Car Expenses	
Petrol	
Travel Expenses	
Medical/Charges	
Clothing/School Uniform	
Nappies/wipes/formula	
Haircuts	
Birthdays/Christmas	
Memberships/subscriptions	
Sundry expenses & emergencies	
Other 1	
Other 2	
Other 3	
<b>Total Outgoings</b>	

Money for creditors	
---------------------	--

Total priority debt repayments	
--------------------------------	--

Money for credit debts	
------------------------	--

	<b>CREDIT DEBTS</b>	
Creditor	Balance owed	Monthly offer of repayment
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
<b>Total owed</b>		
<b>Total monthly repayment</b>		

Total income	
Total outgoings	
Money for creditors	

I confirm this is an accurate record of my financial position

Signed:.....

Date:.....

## COURT PROCEEDINGS

If you do not contact your lender or keep to an agreed repayment plan, your lender will start court action to repossess your home. If you act quickly, it may be possible to avoid court proceedings.

You should seek advice from the CAB or other independent advisor and should keep all your letters and notes of any telephone calls with your lender.

Your lender will take the following action:

- Write to advise you that you are in arrears and ask you to contact them. If you can come to an agreement at this stage, you may avoid going to court
- Your lender may write and threaten court action if you have not kept to a previous agreement and may write threatening court action if payments are not brought up to date. The case may be referred to their solicitor who will write to you.
- You may receive a **default notice** or **calling in notice** from your lender's solicitor asking you to pay off the whole debt. You should contact the solicitor or your lender's Head Office to try and negotiate with them. Even if your offer is not accepted, you should start paying the amount offered as if the lender does take you to court, your case is likely to be treated more favourably.

### Preparing for Court

When your lender has applied to the court for possession of your property, the court will write to you giving you at least 21 days notice of the date and time for the hearing. You will receive a **particulars of claim** which is the lender's case for possession and a **defence form** which you should complete and return to the court within 14 days. You should give the following information:

- Provide a copy of your financial statement
- Details of what you can afford to pay
- Details of any offers you have made
- Any personal circumstances relevant to your case
- Note any details on the particulars of claim that you do not agree with

You must attend the court hear as if you fail to do so, it is likely you will lose your home. The court only has discretion over the arrears payments and cannot reduce your monthly mortgage payments. You should therefore show you can pay your current mortgage and could clear the arrears in a reasonable amount of time.

Before going to court:

- Get advice as soon as possible. The court may have a duty solicitor or the CAB who can speak to you on the day but they are not always available
- Check the particulars of claim. If you do not agree with information, include details on your defence form.
- Complete your defence form keeping a copy to take to court.
- Work out what you can afford to pay and keep making payments to your lender.
- Prepare a financial statement giving details of all your income and expenditure and other debts. Include details of all household members

- Collect all relevant documents to take to court including payslips, employment details, benefit notification and bank statements. Provide evidence if you are intending to sell your home.
- Prepare notes for the hearing
- When you go to court speak to the court usher who will direct you to the court desk.

## **Types of Court Orders**

The Judge will make one of the following orders:

### **Adjournment**

The case may be adjourned if you are going to be able to pay all the arrears in a short space of time or if there is a discrepancy regarding the arrears figure or you are in the process of selling your home. A further hearing will be scheduled when the judge will decide what type of possession order to grant.

### **Suspended Possession Order**

A Suspended Possession Order may be granted if you have reached an agreement with your lender or the judge agrees with your offer. This means your lender has been granted possession of your home but you can remain, provided you stick to the agreed payments. If you miss any payments, your lender can apply for an eviction warrant.

### **Possession Order**

The Judge is likely to grant a possession order if:

- You do not attend the hearing
- It is not possible to come to an agreement to repay the arrears
- You cannot clear the arrears in a reasonable period

You will not be evicted on the date of the hearing but your lender can apply for an eviction warrant after the date specified on the possession order which is usually up to 28 days after the hearing date. Even if you are unable to afford to come to an agreement with your lender, you should attend the hearing as the judge may give you more time to make other housing arrangements.

### **Eviction Warrant**

When the possession order expires, your lender can apply to the court for an eviction warrant. You will receive a **notice of** eviction from the court giving the date and time that eviction will take place. If you act quickly it may still be possible to prevent the eviction by applying to the court for the warrant to be suspended. You should take the notice of eviction to the court and ask for **form N244 – application to suspend a warrant**. The form should be returned to the court at least 48 hours before the eviction is due. You will usually have to pay a fee unless you are exempt because you are in receipt of certain benefits or tax credits.

You can apply to suspend the warrant for the following reasons:

- You can make a new payment offer. Make sure you can keep up the payments and send a copy of your revised financial statement
- You would like more time to sell your home or find somewhere else to live

- You are going to be able to clear the arrears in the near future

The court will then set a date for the hearing which you must attend. The warrant will be suspended if the judge agrees with your proposal to repay the arrears and you will be able to remain in your home as long as you stick to your agreement. The judge may also delay the eviction to give you more time.

### **Court Costs**

You will usually have to pay the court costs which are decided by the judge at the time of the hearing. The costs are usually added to the mortgage and you can continue to pay by instalments.

### **Possible Defences**

You may have a defence against court proceedings if any of the following apply:

- You disagree with the amount of arrears owed. You should provide evidence at the hearing to support your case
- You have already repaid the arrears. Take proof if the money has not yet cleared on your account
- The particulars of claim details are incorrect. The judge could strike out the lenders' claim and the lender will have to start fresh proceedings against you
- You were given bad advice when you took out the loan or mortgage. This is called undue influence and misrepresentation and you should seek advice from the CAB, a solicitor or other independent advisor if you think this applies.

### **Eviction**

If it has not been possible to avoid repossession and you have been unable to find suitable alternative accommodation, you should seek advice from your local council immediately.

## **YOUR RIGHTS AS A BORROWER (MORTGAGOR)**

If your mortgage lender is on the Financial Services Authority Register or has signed up to the Council of Mortgage Lenders Code of Practice, it should follow certain procedures as follows:

- Cases should be treated sympathetically and positively which will usually mean that your lender will contact you by letter or telephone to discuss the arrears.
- When contact has been established, the lender will either seek a meeting or telephone the borrower to look at ways of clearing the arrears, after which an agreement plan should be drawn up.
- If contact can be established and payments continue to be missed, the lender can start legal action
- The code advises that borrowers should let their lenders know about any financial difficulties as soon as possible.

Your lender should also have a written policy on dealing with arrears. You should receive regular information about your arrears and not be pressurised by too many telephone calls or letters. If you think you are being treated unfairly you can complain to the Financial Service Authority's Ombudsman.

### **Options available to Lenders**

The following options are available to lenders:

- Agreeing a repayment plan to cover the mortgage and the arrears
- Capitalising the arrears (adding the arrears to the mortgage)
- Extending the term of the mortgage
- Agreeing to a payment holiday for a specified amount of time
- Changing the type of mortgage (from interest only to repayment)

The lender should also:

- Consider the borrower's financial circumstances to ensure repayments are affordable
- Try to ensure borrowers are aware of any benefits they may be entitled to
- Keep to guidelines with regard to charges for additional administration in order to manage the account

### **Methods of obtaining possession**

A record of all repossessions is held on the Mortgage Repossessions Register held by the Council of Mortgage Lenders. Any future application for a mortgage will be checked against this register.

Possession should only be sought as a last resort and lenders can take possession in one of three ways:

- By obtaining a court order
- By voluntary agreement although this may result in an earlier sale than if the lender had to gain possession through the courts and the borrower would still be responsible for the mortgage and arrears until the property was sold.

- By surrender or abandonment of the property. The borrower still remains liable for the mortgage and arrears plus interest until the property is sold.

The Council of Mortgage Lenders issued guidance that lenders should follow before starting possession proceedings with the aim of reducing the number of repossessions:

- The lender should provide a regulated information sheet or the National Homelessness Advice booklet on mortgage arrears.
- The lender should provide details of the arrears, the total outstanding mortgage and details of any interest or other changes.
- The lender should discuss the reason for the arrears, the borrower's financial circumstances and any proposals for repayment.
- The borrower should be advised to contact their local housing department and referred for independent debt advice.
- The lender should consider reasonable requests from the borrower to change the date of payment or the way payment is made. If this is not agreed, the lender should write and explain the reasons.
- The lender should respond promptly to any payment proposals and if it does not agree, give reasons in writing within ten working days.
- If the lender sets out proposals for the repayment or arrears, they should be detailed enough to allow the borrower to understand the full implications of the proposal and sufficient time should be given for the proposal to be considered.
- If the agreed payments are not made, the lender should warn the borrower of its intention to start possession proceedings by giving them 14 days notice in writing and should not start proceedings if the breach is remedied within the 14 day period.
- The lender should not start possession proceedings if the borrower can demonstrate they have made a claim under a mortgage protection policy.
- The lender should consider postponing possession proceedings if the borrower can demonstrate that reasonable steps are being taken to sell the property and the borrower should provide evidence.
- Lenders should not start court action while arrears negotiations are ongoing.
- The lender should consider postponing possession proceedings where the borrower has made a complaint to the Financial Ombudsman Service. Where a lender does not agree to postpone, it should advise the borrower in writing at least 5 days prior to taking legal action.

## Sources Of Advice and Information

### Debt and Benefit Advice

Citizens Advice Bureau		<a href="http://www.adviceguide.org.uk">www.adviceguide.org.uk</a>
National Debt Helpline	0808 800 4444	<a href="http://www.nationaldebtline.co.uk">www.nationaldebtline.co.uk</a>
Consumer Credit Counselling Service	0800 138 1111	<a href="http://www.cccs.co.uk">www.cccs.co.uk</a>
Payplan	0800 280 2816	<a href="http://www.payplan.com">www.payplan.com</a>

### Independent Financial Advice

The Financial Services Authority		<a href="http://www.fsa.gov.uk">www.fsa.gov.uk</a>
Payplan	0800 917 7819	<a href="http://www.payplan.com">www.payplan.com</a>
The Council of Mortgage Lenders		<a href="http://www.cml.org.uk">www.cml.org.uk</a>
The Money Advice Trust		<a href="http://www.moneyadvicetrust.org">www.moneyadvicetrust.org</a>

### Information on benefit entitlement

Department for Work & Pensions		<a href="http://www.dwp.gov.uk">www.dwp.gov.uk</a>
Jobcentre Plus	0845 603 6095	<a href="http://www.jobcentreplus.gov.uk">www.jobcentreplus.gov.uk</a>
Tax Credit Customer Helpline	0845 300 3900	
Disability Living Allowance and Attendance Allowance Helpline	01179 718311	
Carer's Allowance Helpline	01253 856123	

### Housing Advice

South Hams District Council	01803 861260	<a href="http://www.southhams.gov.uk">www.southhams.gov.uk</a>
Shelter	0808 800 4444	<a href="http://www.shelter.org.uk">www.shelter.org.uk</a>

### Utility Companies

EDF Energy	0800 085 0000	<a href="http://www.edfenergy.com">www.edfenergy.com</a>
South West Water	0800 0830 283	<a href="http://www.swwater.co.uk">www.swwater.co.uk</a>

### Local Courts and Legal Advice

Torquay & Newton Abbot Country Court	The Willows, Nicholson Road, Torquay TQ2 7AZ	01803 616791
Plymouth Combined Court	10 Armada Way, Plymouth PL1 2ER	01752 677400
Legal Services Commission	0845 345 4345	<a href="http://www.communitylegaladvice.org.uk">www.communitylegaladvice.org.uk</a>