

Stage 5:

Dealing with priority debts – 01 if you own a home

Mortgages

If you have mortgage arrears, they are one of your most important debts as the loan is secured against your home. If you are at least two months in arrears and your lender has tried looking at other options, they can start court action to take possession of your home. So it is important that you contact your lender as soon as possible to discuss how you could clear the arrears and look at any options that may be available to you.

If you have mortgage protection insurance and are eligible to make a claim, do so as soon as possible.

Get advice if the insurance company will not pay.

How much should I offer to pay towards arrears?

If you can afford it, make an offer that covers the full monthly mortgage instalments plus an amount to clear the arrears. Aim to clear the arrears as soon as possible, as interest builds up on them.

What can I do if my lender asks for more than I can afford?

If you have been able to afford to make an offer, start making payments. Even if your lender refuses the offer and starts court action, the court may decide your offer is reasonable.

Also, discuss with your lender whether you may have any other options. Some possible options are below, to find out more go to <http://mortgagehelp.direct.gov.uk>

- If your home is worth more than your mortgage, your lender may agree to 'capitalise' the arrears. The arrears are added to the capital you owe and you repay them over the full mortgage period with higher monthly instalments.

- If you have a repayment mortgage that is due to end a number of years before you retire, your lender may agree to extend the time it has to run and so reduce your monthly instalments.
- If you have a repayment mortgage, your mortgage lender may agree to let you make interest only payments for a time and delay paying off the capital.
- If you have had a temporary, unexpected drop in income but have been making regular payments to your mortgage over the past five months (or had an agreed payment holiday with your lender), your lender may agree to delay some of the monthly interest due on your mortgage. This would reduce your payments for up to two years. The money is not written off – you would have to pay it back eventually, with interest. And you would have to switch to an interest-only mortgage, if you have not done so already.
- If you have an endowment mortgage that has been running for a significant number of years, you may be able to sell the policy and use the money to clear the arrears. You may need permission from your lender and you would have to change to a repayment mortgage, which would increase your monthly instalments. And you would have to take out new life insurance.

Get advice

- If there is no other way of remaining in your home and you have dependants of someone in your household is pregnant, seriously ill, disabled or elderly, you may be able to get help through the Mortgage Rescue Scheme. This might enable you to remain in your home either by getting an equity loan from a housing association or by becoming a tenant of the association.

Get advice. Ask at your Local Service Centre.

Stage 5:

Dealing with priority debts – 02 if you own a home

If you are thinking of selling your home to a private company and renting it back, take extra care. These are known as Sale and Rent Back arrangements. You might not get the market value for your home and, after six or 12 months, the landlord may be able to evict you quite easily.

Get advice.

Is my lender likely to start legal action?

Financial Services Authority (FSA) rules, and court rules say that your lender should consider other options before trying to repossess your property. In practice, most lenders won't start legal action until the mortgage is well over two months in arrears and then only after a number of warning letters.

What happens if my lender starts legal action?

The court will send you a claim form for possession of property. This will have:

- the time and date you must attend court
- the name and address of the court
- a particulars of claim form, with information about the lender's claim
- an information sheet that explains the legal process
- a defence form for you to put your case to the court and your lender before the hearing.

Respond to the summons, so that the court and your lender know your circumstances.

- Check the information given in the particulars of claim is correct.

If any of the information is wrong, get advice as soon as possible.

- Complete and return the defence form to the court within 14 days. You should offer the amount you worked out using your financial statement

- keep paying your lender what you have offered on the defence form. Or, if you have not already started paying, start now.

Do I need to go to the hearing?

Yes, even if you have returned the defence form to the court and reached an agreement with your lender, it's important that you go to the hearing.

Take a copy of your financial statement and any papers the court might want to see as proof of your situation.

What happens at the hearing?

Mortgage possession hearings take place in private. The only people present will be yourself and your representative, if you have one, the Judge and the lender's solicitor. They are usually over very quickly – most mortgage possession hearings take less than five minutes.

First of all the Judge will look at the documents provided by the lender's solicitor to see if they are in order. These documents include the summons and the deeds of your property.

The Judge will then ask you how you plan to clear the arrears. You may need to show the lender's representative and the Judge your financial statement. The Judge may ask you further questions about how you got into arrears, why you can afford the amount you are offering and when you can make the first payment. They may also ask the lender's solicitor to comment on your replies.

At the end of the hearing, the court will make one of these orders:

Adjourn the hearing to a later date. The usual reason is that more information is needed.

Adjourn generally. This is because the arrears are low and can be cleared in a short time. It means no possession order is made and no date is set

Stage 5:

Dealing with priority debts – 03 if you own a home

for a further hearing. If you miss a payment, your lender can ask the court for a further hearing.

A suspended possession order. This is the most common order made and means there is a possession order but, as long as you make the agreed payments, you can't be evicted.

A possession order. This allows the lender to ask the bailiffs of the court to evict you after a set period, usually 28 days. This generally happens only if you don't attend the hearing or you can't afford to clear the arrears within a reasonable period. At the end of the 28 day period, the lender has to apply to evict you.

How long will I have to pay the arrears?

The longest the court can allow is the time your mortgage has left to run. If you intend to ask the court for this, get your home valued before the hearing. Take a written valuation if you can.

Can I pay more than the court orders me to?

Yes. It's in your interest to clear the arrears as soon as possible, as you are paying interest on them.

What can I do if my circumstances change?

Ask the court to reduce the payment. Complete Form N244, and hand it in at the court. You may have to pay a fee. Contact your lender and ask them to agree to your reduced offer. There will be a court hearing. It's important you attend, so you can explain why you can no longer afford the payments you were ordered to make before.

What happens if I don't keep up the payments the court orders?

Your lender can ask the court to send their bailiffs to evict you. Normally you will receive a letter telling you the date of eviction.

You can ask the court to stop the eviction and give you time to pay the arrears. Complete Form N244, (from the court), and hand it in at the court. You may have to pay a fee. You will be given a time and date for the hearing. If you don't attend, you will be evicted on the set date. The court may stop the eviction if you explain:

- why you didn't make the payments previously ordered
- and how you are now able to make the payments, and clear the arrears.

Will the Department for Work and Pensions (DWP) help with my mortgage payments?

If you are getting Income Support, income-related Employment and Support Allowance (ESA), Pension Credit (guarantee credit) or income-based Jobseeker's Allowance (JSA) and you used the mortgage loan to buy your home or pay for certain home improvements, you may be entitled to help with your mortgage payments. DWP only pays interest on your mortgage, not capital repayments. The interest is paid at a set rate, not the rate your lender charges. So payments from DWP can be less than the monthly instalment due on your mortgage.

DWP mortgage payments can also be reduced if:

- a non-dependant lives with you
- DWP think your absent partner is paying their share
- DWP think your housing costs are excessive
- you take out or increase a mortgage while getting Income Support, Pension Credit (guarantee credit), income-related ESA or income-based JSA.

In most cases, there is a shortfall between the monthly mortgage instalment due and any DWP payments. You must make up the difference and pay something towards any arrears.

Stage 5:

Dealing with priority debts – 04 if you own a home

When will DWP make payments to my mortgage?

If you or your partner are 60 or over, any payments start when your Pension Credit (guarantee credit) starts. If you and any partner are under 60, payments generally start 13 weeks after you start getting benefits. But there are exceptions.

While you are getting JSA, the DWP may not make payments to your mortgage for longer than 104 weeks, or 104 weeks from 4 January 2009, whichever is the later. But there are exceptions.

Get advice if you need to know when the DWP may start making payments to your mortgage.

Secured loans (also known as second mortgages)

If you have taken out a secured loan repayable by instalments, read the section on mortgage arrears. Much of it also applies to secured loans.

Additionally, your loan is likely to be a regulated agreement, giving the court powers in certain circumstances to reduce the instalments and the interest rate.

Get advice.

Your loan is likely to be a **regulated agreement** if:

- you took it out on or after 6 April 2008, or
- it is for £25,000 or less and you took it out between 1 May 1998 and 5 April 2008, or
- it is for £15,000 or less and you took it out before 1 May 1998.

Occasionally Income Support, Pension Credit (guarantee credit), income-related ESA or income-based JSA payments can be made towards a secured loan.

Get advice.

Secured overdrafts

If you have an overdraft secured on your home, for example for your business, you have no right to pay the debt in instalments. Because of this, the court has no power to let you stay in your home, unless you can pay the whole amount off immediately. At the most, the court can give you extra time to allow you to sell your house. However, you may be able to negotiate an instalment arrangement with your lender.

If you are in this situation, get advice.

Leaseholds

If you are a leaseholder, you will have to pay ground rent and service charges. If you have arrears the freeholder could, in certain circumstances, apply for a court judgment to repossess your property. Or they could ask your mortgage lender to pay the arrears, which can lead to mortgage arrears.

If you have ground rent or service charge arrears, get advice.

If you dispute service charges and your lease allows it, you may be able to discuss disputed items at an arbitration meeting. Or, you could ask for your case to be heard at a Leasehold Valuation Tribunal (you may have to pay a fee for this).

If you dispute service charges, get advice.

Stage 5:

Dealing with priority debts – 05 if you pay rent

If you have rent arrears, they are one of your most important debts, as they could lead to court action and you losing your home.

Types of tenancy

First check what type of tenancy you have. If your landlord takes court action, the type of tenancy you have affects what decisions your landlord and the court can make. The agreement you signed at the start of your tenancy should tell you what type it is.

If you are uncertain, get advice.

The most common types of tenancy are briefly described below.

Secure tenancies

Most Newham Homes and some housing association tenants (if the tenancy began before 15 January 1989) have secure tenancies. Before your landlord can take court action, they must serve a **Notice of Seeking Possession** on you. The notice must say why they are asking for possession. If the reason is rent arrears, the court can consider whether it would be reasonable to give your landlord possession. And, the court can let you stay in your home on condition that you pay a set amount off your arrears every week/month.

Introductory tenancies

If you have been a Newham Homes tenant for less than a year, you may have an introductory tenancy. Before Newham Homes can take court action to evict you, they must give you at least four weeks written notice. Ask Newham Homes within 14 days to review their decision. It is unlikely that the court will have the power to let you stay in your home against Newham Homes' wishes.

Get advice.

Assured tenancies

You are likely to have an assured tenancy if you became a housing association tenant on or after 15 January 1989. Before your landlord can take court action, they must serve a **Notice of Intention to bring Possession Proceedings** on you. This notice must say why the landlord is asking for possession. If it specifically states that you have at least two months or eight weeks rent arrears, the court may not be able to let you stay in your home against your landlord's wishes.

Assured shorthold tenancies

If you started to rent from a private landlord on or after 15 January 1989 and your tenancy is for a fixed period, you probably have an assured shorthold tenancy. Before your landlord can take court action, they must serve a **Notice of Intention to bring Possession Proceedings** on you or if your tenancy has already ended, have given at least two months written notice. It's unlikely that the court will have the power to let you stay in your home against the landlord's wishes.

Others

If none of these apply to your tenancy and it started on or after 15 January 1989, you may not have any right to stay in your home. In most cases, however, your landlord can't evict you without court action.

Get advice.

Stage 5:

Dealing with priority debts – 06 if you pay rent

Negotiating with your landlord

How much should I offer to pay towards arrears?

Your offer should cover the full rent (after any Housing Benefit), plus an amount towards the arrears. Aim to clear the arrears as soon as possible, but don't offer more than you can afford.

If you:

- get Income Support, Pension Credit (guarantee credit), income-based JSA or income-related ESA
- and rent your home from Newham Homes or a housing association,

you can ask the DWP to make payments directly from your benefit (currently just over £3 a week). They may also pay, direct from your benefit, some of any rent not covered by Housing Benefit.

If you have a low income you could offer a similar amount. If not, your landlord will expect significantly more than £3 a week. They will take into account the size of your arrears and your payment history. Private landlords don't usually let arrears build up and take action early.

What can I do if my landlord asks for more than I can afford?

Send your landlord a copy of your financial statement. Ask them to accept your offer. Start making the payments you have offered. If you have an introductory, assured or assured shorthold tenancy, coming to an agreement with your landlord may be the only way you can stay in your home.

Also, get advice.

If your landlord starts court action

What happens if my landlord starts court action?

First, your landlord must have sent you the correct written notice for your type of tenancy. Get in touch with the landlord to sort out the arrears. Once the notice has expired the landlord can then ask the court to send you a claim form. Check the information in the notice and the claim form.

If it is wrong, or there are any outstanding repairs, get advice.

There will be a defence form with the claim form. Fill it in and return it to the court within 14 days. Start paying your offer, whether or not it has been agreed with your landlord.

What decisions can the court make?

Depending on what type of tenancy you have (see types of tenancy), the court can make the following decisions:

Adjourn the hearing to a later date. The usual reason is that more information is needed.

Adjourn generally. This is because the arrears are small and you can clear them over a short period. It means no possession order is made and no date is set for a further hearing. If you miss a payment, your landlord can ask the court for a further hearing.

A suspended possession order. This means there is a possession order but, as long as you make the agreed payments, you can't be evicted.

Stage 5:

Dealing with priority debts – 07 if you pay rent

A postponed possession order. The court may make this order if you have a secure or assured tenancy. It means that, as long as you make the agreed payments, you can't be evicted.

A possession order. This means your landlord is given possession. They can ask the court, usually after a set period, for a date to evict you. The court must make this type of order in some cases where you don't have a secure tenancy. Other reasons for this type of order can be that you can't afford to pay the rent and arrears or that you don't attend the hearing.

Do I need to go to the hearing?

Yes. It's important to go, even if you have already reached an arrangement with your landlord. Take a copy of your financial statement and any papers the court may wish to see as proof of your situation, including any papers about your Housing Benefit claim.

What happens at the hearing?

The hearing is held in private. Your landlord and their representative give their information to the court. Then the Judge asks you to comment and, if appropriate, to say how much you can afford to pay off the arrears. The Judge then makes the decision.

What can I do if my circumstances change?

Ask the court to reduce the payment. Complete Form N244 and hand it in at the court. You may have to pay a fee. Contact your landlord and ask them to agree to your reduced offer. There will be a court hearing.

What happens if I don't keep up the payments the court orders?

Your landlord can ask the court to send their bailiffs to evict you. Normally the court will send you a letter telling you the date of eviction.

You can ask the court to stop the eviction and give you time to pay off the arrears. Complete Form N244 and hand it in at the court. You may have to pay a fee. You will be given a time and date for the hearing. If you don't attend, you will be evicted on the set date. The court may stop the eviction if you explain:

- why you didn't make the payments previously ordered
- and how you will be able to pay the rent and clear the arrears.

Housing Benefit

You may be entitled to Housing Benefit if your family's income is low. You can get Housing Benefit whether or not you are working. The amount you get depends on a number of things, including your (and any partner's) income.

If your Housing Benefit does not cover your full rent you will need to pay the balance. If you are not getting full Housing Benefit, you might be able to apply for a discretionary extra amount.

Get advice.

Stage 5:

Dealing with priority debts – all other priority debts

08

Council Tax arrears

Contact the council as soon as possible to negotiate payment and prevent bailiff action. Also, check if you can reduce your arrears and/or current bill.

See Stage 1 – Getting more money and managing bills.

How is Council Tax collected?

Council Tax is collected by 10 or 12 monthly instalments. If you don't make payments, the council will apply for a liability order at the Magistrates' Court.

If you think you don't owe the money, get advice.

Once it has a liability order, the council can ask you or your partner for details on your financial circumstances and/or:

- send the debt to the bailiffs for collection
- ask the Department for Work and Pensions (DWP) to deduct an amount each week from your Income Support, ESA, Pension Credit (guarantee credit) or income-based JSA
- order your employer to take an amount each pay day from your earnings
- apply to the court for a charging order to make the debt 'secured' against your home
- apply to the High Court to make you bankrupt.

The council can do only one of these things at a time. Unless it knows that you are particularly vulnerable, its first action if you do not reach an agreement is usually to send the debt to the bailiffs. Contact the council by visiting Canning Town, East Ham, Manor Park or Stratford Local Service Centre. Or by phoning 020 8430 3262/2918 or 3259. Explain your situation and make an arrangement to pay the arrears.

Get advice if you are unable to make an arrangement that you believe you can afford.

How much should I offer to pay towards arrears?

Offer what you can afford. Use your financial statement to work it out. If you get Income Support, income-related ESA, Pension Credit (guarantee credit) or income-based JSA, ask the council to request direct deductions from your benefit. The most that can be taken from Income Support, income-related ESA, Pension Credit (guarantee credit) or income-based JSA for Council Tax arrears is currently just over £3 a week. But, if you get contribution-based or contributory ESA, the DWP can in some circumstances take a third of your weekly benefit for Council Tax arrears.

My debt is with the bailiffs, what can I do?

Unless they have been in before, bailiffs have no right to enter your home. But, if you sign any documents the bailiffs may later claim that this gives them the right to take your possessions. If you are disabled, seriously ill or vulnerable, contact the council immediately to let them know. Offer the bailiffs what you can afford. If they refuse this, make the payments anyway and keep proof of payments.

Also, get advice.

If the bailiffs can't collect the debt, they will send it back to the council. Contact the council immediately to make your offer.

How much can the council tell my employer to take from my earnings?

This is worked out as a proportion of your earnings. The deductions are high and can make it difficult to pay other essentials such as rent or mortgage.

Get advice.

Stage 5:

Dealing with priority debts – 09 all other priority debts

What does it mean if the council gets a charging order?

This can only happen if you own your own home. It means that the debt is secured against it and that you cannot sell your home without paying the debt.

Get advice.

What happens if the council makes me bankrupt?

Bankruptcy can have serious consequences. If you own your own home, you can lose it.

Get advice.

Could I go to prison?

If the debt is returned from the bailiffs unpaid, the council can refer it to the Magistrates' Court to decide what should happen. The court will arrange a means enquiry hearing. Go to the hearing. If the Magistrates' Court believes you could pay but won't, you can be imprisoned.

What happens at a means enquiry hearing?

The court investigates why you haven't paid and whether you could have paid at any time since you first owed the money. It also looks at what you are offering and how long this would take to clear the debt. Take a copy of your financial statement, plus any proof you have of your financial circumstances both now and since you first owed the money.

The order most frequently made is an order to pay. This means that, as long as you make the payments ordered, no further action is taken. If payment would cause you extreme hardship, the court can write off all or part of the debt. Or, if the court finds that you didn't pay despite being able to, it can order your imprisonment.

Get advice.

What can I do if my circumstances then change?

If your circumstances change after a means enquiry, you can go back to the court to ask for the payment order to be reduced.

Gas and electricity arrears

Can my fuel be disconnected?

This rarely happens, as fuel suppliers always offer a pre-payment meter. But you should still treat the arrears as a priority. Try to arrange to pay them in a way that suits you and at an amount you can afford.

What ways are there of paying gas and electricity arrears?

One or more of the following options may be available to you:

Instalments. You pay a set amount every week, fortnight or month and clear the bill before the next one is due.

Payment plans (also known as Budget Plans). The company estimates the annual cost of the fuel you use, and works out a monthly sum for you to pay which includes payment of arrears.

Deductions from Income Support, income-related ESA, Pension Credit (guarantee credit) and income-based JSA. The company estimates the cost of the fuel you are using and adds an amount towards the arrears. You ask the DWP to take this from your benefit every week. The most they can take for arrears is just over £3 a week.

Prepayment meters. You recharge a key/card to put in your meter, which is set to gradually collect money for your arrears as well as for the fuel you are continuing to use.

Stage 5:

Dealing with priority debts – 10 all other priority debts

Some fuel companies have set up trust funds that may be able to help you pay a fuel bill if you are in financial hardship.

Get advice.

Magistrates' Court fines

If you get a Magistrates' Court fine you can be ordered to pay immediately, or by a set date, or by regular instalments. If you are summonsed to a court hearing, take a copy of your financial statement with you to back up any offer you make.

If you can't pay the fine or are at risk of imprisonment, get advice.

What can I do if the fine is with bailiffs?

Contact the bailiffs to try to make an arrangement to pay in a way that you can manage.

If you need help dealing with the bailiffs get advice.

What should I do if I'm ordered to attend a 'means enquiry'?

Go to the hearing. If the Magistrates' Court believes you could have paid but didn't you can be imprisoned. Pay as much as you can before the hearing and take with you any money you can afford to pay on the day.

Also, see "What happens at a means enquiry hearing?" and "What can I do if my circumstances then change?" under the Council Tax section.

Parking penalties

If a parking penalty isn't paid, the local authority gets an order from the county court, then sends it to private bailiffs to collect the money. This can cause problems as the bailiffs may refuse to accept payment by instalments. If you get a parking penalty, pay it promptly if possible, but don't put payments to a priority creditor at risk. After a set period, the amount owed for an unpaid parking penalty increases sharply and eventually bailiffs' costs are added.

Hire purchase and conditional sale agreements

Goods obtained on hire purchase or conditional sale belong to the finance company until all the money is paid. In the meantime:

- you can't sell the goods without the finance company's permission
- if you have paid less than a third of the total purchase price, the company can take back the goods without a court order
- if you have paid more than a third of the total purchase price, the company can ask the county court for a possession order allowing them to take back the goods.

Can I stop the company getting a court order to take away the goods?

You might be able to, if you attend the court hearing. Take a copy of your financial statement with you. If you can afford to pay the full monthly instalment plus something towards the arrears every month, the court may order that the company can't take the goods as long as you do this.

If you can't afford the full instalment plus something off the arrears each month, get advice.

Stage 5:

Dealing with priority debts – 11 all other priority debts

Income Tax and VAT

HM Revenue and Customs is tough on collection.

What can they do?

- They can seize your goods without first getting a court order
- where you owe at least £750 they can start bankruptcy proceedings
- they can collect debts through the Magistrates' and County Courts.

How much should I offer?

Treat the tax or VAT as a priority debt. Aim to clear it as quickly as possible. Use your financial statement to work out what to offer.

If you need further advice, contact Taxaid's advice line on 0845 120 3779. They offer free and confidential tax advice.

Child maintenance

If you have to pay child maintenance that has been calculated by the Child Support Agency, the amount you pay will take into account your income, the number of children you are paying maintenance for, whether they stay with you every week and whether any other children live with you. For further information and contact numbers go to www.csa.gov.uk

What can the Child Support Agency do if I don't pay?

- If you are an employee, deductions can be taken from your earnings
- if you get Income Support, income-related ESA, Pension Credit or income-based JSA, deductions can be taken from your benefit in most circumstances. The maximum deduction can be £5 or £6 a week

- if you are self-employed, the Child Support Agency can ask the magistrates court for a liability order and then take further action. This includes sending the debt to the bailiffs, taking action through the County Court or asking the Magistrates' Court for a means enquiry.

Social fund loans

If the Department for Work and Pensions (DWP) is taking money from your benefit to repay a Social Fund loan, list the loan under priority debts on your financial statement. This is because you have only a limited say in how much is taken. If you are no longer getting benefit, treat the overpayment as a non-priority debt.

What if the DWP is taking more than I can afford?

Write to them. Explain your financial circumstances and any changes that have happened since you took out the loan. Ask them to reduce the amount they are taking each week. It might help to enclose a copy of your financial statement.

Stage 5:

Dealing with priority debts – all other priority debts

12

Benefit overpayments

Overpayments of benefit can be caused by official errors, delays in reassessing claims, customers' errors and/or deliberate fraud. Depending on the circumstances, you may not be liable for the debt.

If you are asked to pay back an overpayment, or if the DWP or the council is considering prosecuting you for fraud, get advice.

If money is being taken from your benefit for an overpayment, show the overpayment under priority debts on your financial statement. If £4 or more a week is being taken from your benefit, you may be able to get this reduced.

Get advice.

If you are no longer getting benefit, treat the overpayment as a non-priority debt.

Always list any Housing Benefit overpayments under priority debts.

If the overpayment was made to a private landlord or housing association, get advice.

Tax Credit overpayments

If you have been told you have been overpaid Working Tax Credit and/or Child Tax Credit, show the overpayment under priority debts. HM Revenue & Customs (HMRC) will probably take deductions from your tax credit payments but they can use the same recovery methods as for a tax debt. If the deductions are causing you hardship, ask the HMRC to reduce the deductions to an amount you can afford. In cases of extreme hardship, they can consider writing off all or part of the debt.

Get advice if you do not agree that you have been overpaid or if the overpayment was caused by HMRC's mistake and you followed the rules for reporting any mistakes you noticed.