Introduction

1. This Statement provides an overview of how mortgage lenders currently try to help borrowers with financial difficulties. The facts of each arrears and possession case are unique, and each case needs to be treated individually. Mortgage lenders adopt flexible procedures for the handling of arrears and possession cases which are aimed at assisting the borrower as far as possible in his or her particular circumstances. Individual practice will vary between lenders. This Statement describes how lenders deal with mortgage arrears; the procedures adopted when handling possession cases; the subsequent sale of property in possession and finally the recovery of any outstanding debt. Individual circumstances might arise in which action outside those referred to in this Statement may need to be taken.

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MORTGAGE ARREARS

General Principles

2. The following general principles are followed by mortgage lenders:

(a) When a borrower falls into arrears, the problem should be handled sympathetically and positively by the lender. The lender’s first step will be to try to contact the borrower to discuss the matter.

(b) As soon as financial difficulties arise, the borrower should let the lender know as soon as possible.

(c) Once contact has been established, a plan for dealing with the borrower's financial difficulties and clearing the arrears will be developed consistent with the interests of both the borrower and the lender.

(d) Possession of the property will be sought only as a last resort when attempts to reach alternative arrangements with borrowers have been unsuccessful. The borrower will remain liable for the full mortgage debt.

The Handling of Arrears - Initial Action taken by Lenders

3. Mortgage lenders or their agents may use the following procedures for dealing with arrears:

(a) The lender's first step will be to try to contact the borrower, for example, by letter or telephone.

(b) The lender may seek a meeting with the borrower to discuss the situation and examine ways to resolve the problems. Alternatively, this may be done via the telephone or letter.

(c) Once contact has been established, a plan for clearing the arrears will be developed consistent with the interests of both the borrower and the lender.

(d) If contact cannot be made with the borrower or payments continue to be missed, legal action to recover the arrears or take possession of the property may be necessary.

Alleviating Arrears Problems

4. Lenders have the following measures which they can use to help some borrowers in arrears difficulties.

   A borrower should take appropriate professional advice as part of considering these options:

   Extend the Term of the Mortgage
(a) In the case of a repayment loan the term of the loan can be lengthened, although in most cases this does not make a significant difference to the monthly repayments.

**Change the Type of Mortgage**

(b) An investment-backed mortgage *(for example an endowment or ISA mortgage)* may be changed to a repayment or interest-only mortgage with a possible subsequent reduction in monthly outgoings. This will usually only be possible for a short period of time. Borrowers with an interest-only mortgage should ensure that they are able to repay the mortgage at the end of the mortgage term.

**Defer Payment**

(c) The mortgage repayment may be deferred for a period. This may be particularly appropriate where there is a temporary shortfall of income. Lenders may in certain circumstances be willing to accept, for a reasonable period of time, the most the borrower could reasonably afford. However, this is not a solution where, because of a permanent reduction in income, a borrower is unable to afford anywhere near the full mortgage repayments and there is little prospect of an improvement in the situation in the foreseeable future. **Where repayments are deferred for a time, the borrower will need to make up these repayments in the future.**

**Capitalise Interest**

(d) Linked to (c) is the possibility of capitalising interest. This may be appropriate where arrears have built up but full monthly repayments can be resumed. The amount outstanding (capital sum and arrears of interest) may be rescheduled and repaid over the life of the loan. This might have an impact on the interest rate charged and whether a repayment vehicle will repay the loan in the case of an investment backed mortgage. Such an approach is unlikely to be adopted where the borrower has in the past failed to adhere to an alternative payment arrangement.

5. When agreeing alternative repayment arrangements, lenders will carry out an appraisal of a borrower’s ability to meet the repayments. In some cases, the arrangements might be made for a **set** period of time, after which an assessment is made on whether the circumstances have changed to the extent that the arrangement can be varied.

6. In addition, lenders try to ensure that the borrower is aware of the availability of social security benefits which might apply such as income support to meet part of the mortgage interest repayments. Where the borrower has a multiple debt problem, the lender might suggest that the borrower contact a Citizens’ Advice Bureau or debt advice agency. At the borrower’s request and with the borrower’s consent, the lender will liaise wherever possible with a debt counselling organisation, for example, Citizens’ Advice Bureaux, money advice centres or the Consumer Credit Counselling Service.

7. In the vast majority of cases these approaches, together with the efforts of the
borrower, are sufficient to prevent a minor arrears problem from becoming a major problem leading to possession. It is significant that while many people fall into arrears for a short time, a much smaller proportion have large arrears and a very small proportion result in possession.

8. Where mortgage arrears have accrued on an account, lenders recognise the need for the account to be closely administered by staff with relevant expertise in dealing with borrowers experiencing repayment difficulties. Details of the mortgage account may be transferred to the lender's specialised mortgage arrears department where the staff would liaise directly with the borrower. Alternatively, the account may be administered by the local branch, with overall monitoring by the lender's central arrears department. The borrower would be contacted to establish why the mortgage repayments were no longer being made, whether the borrower's circumstances had changed, for example, if the borrower was no longer employed, and if an alternative payment arrangement could be agreed. A record of the mortgage arrears may be held by a credit reference agency.

Charges on Accounts in Arrear

9. Lenders have developed effective procedures to deal with cases where the borrower is unable to meet the mortgage repayments in full. A great deal of time and resources have been devoted to ensuring that these procedures operate to assist defaulting borrowers remain in their homes. Taking into account the additional costs which might be incurred in administering accounts in arrear, lenders may charge a fee to the borrower's account.

10. However, lenders also recognise the difficulties facing borrowers who are experiencing problems in meeting their mortgage repayments. If a fee is charged on an account, it usually represents the reasonable cost of the additional administration required. When fees are charged, these may be on either a monthly or quarterly basis. Alternatively, lenders may charge only where certain administrative procedures have been carried out, for example, a home visit by a money adviser (employed by the lender) or where legal proceedings have started.

11. In practice, lenders advise borrowers of any fees which might be charged either prior to the fee being levied or, when the fee is in respect of services, prior to the services being provided. Lenders may also advise borrowers when they take out a mortgage that fees may be charged to the account if it falls into arrear. Information on any fees is usually incorporated in mortgage documentation or published tariffs.

12. In many cases where borrowers are experiencing difficulties in meeting their mortgage repayments, an alternative payment arrangement may be reached between the lender and the borrower. If an alternative payment has been agreed, and is being adhered to by the borrower, lenders may either cease charging a fee on the account or continue to charge fees until the account has been brought up to date.

POSSESSION

Methods of Obtaining Possession

13. Possession of a property will be sought only as a last resort when all attempts
to reach alternative arrangements with the borrower have been unsuccessful. A lender may obtain possession of a property in three ways:

(a) By Court Order

When taking possession proceedings through the courts, lenders must adhere to all the legal requirements and procedures which give considerable protection to the borrower. Court proceedings may be suspended should the court consider that a borrower may be able, within a reasonable time period, to repay any sums due under the mortgage. The possession order may be postponed for a time to allow the borrower to find alternative accommodation. **Borrowers are encouraged to attend court proceedings.**

(b) By Voluntary Agreement with the Lender

A borrower who has fallen into arrears and who has little prospect of repaying such arrears may reach an agreement with his lender to hand over the property to the lender without the need to obtain a court order. A borrower may also be asked to sign a voluntary possession declaration to confirm the agreement, which would make it clear that mortgage interest together with other charges will continue to accrue until the property is sold. A voluntary surrender may result in an earlier sale of the property than would be the case with court proceedings.

(c) Surrender (or Abandonment) by the Borrower without Notifying the Lender

In cases where a borrower has failed to discuss his mortgage arrears problems with the lender, or where suitable arrangements have not been reached between the lender and borrower, a borrower may simply vacate the property without advising the lender; often keys are sent to the lender, this being possibly the first intimation that the property has been surrendered. In such circumstances, the property would be sold by the lender. Again the borrower is liable for the total debt including mortgage interest which accrues until the property is sold.

**Borrowers should speak to their local housing authority to check if how their property is taken into possession (voluntary or via court proceedings) has an impact on any subsequent application for housing.**

Irrespective of how the property is taken into possession, the borrower will remain liable for the outstanding debt including any accrued interest and charges between the date of possession and the date of sale.

14. In some cases borrowers who have had their properties taken into possession may seek a mortgage on another property. Potential borrowers should not conceal the fact that they have defaulted on a previous loan. The subsequent lender will be aware of the previous mortgage either as a result of enquiries of the original lender or the CML Mortgage Possessions Register which lists borrowers who have had their properties taken into possession. **This information will remain on the Possessions Register for six years.**
Administrative Aspects

15. Whilst lenders operate different administrative procedures to deal with possession cases, the following procedures may be used:

(a) Should direct contact with the borrower not result in an arrangement (for example, an alternative payment arrangement) which would enable the borrower to remain in the property, then the lender may start possession proceedings. This is usually the only course of action available to the lender by that time.

(b) In some cases, further follow-up contact may continue to be made up until, and after, the court hearing, every effort being made to encourage the customer to discuss suitable repayment arrangements and avoid the need for possession.

(c) Instructions for possession are implemented by the lender, after a full review of the borrower's file by a person fully aware of the facts, and a final letter or telephone call to the borrower.

(d) Before taking possession, some lenders may liaise with the relevant local housing department. The borrower may also be advised to register on the local authority's list as soon as possible. Lenders recognise that it is important to give local authority housing departments as much notice as possible where borrowers and their families might need to be rehoused. However, this has to be balanced against the possibility that alternative arrangements might be reached between the lender and borrower which would enable the borrower to remain in the property. The timing of providing advice to housing departments will vary from case to case and lenders will only take this course of action with the consent of the borrower.

(e) On taking possession, the property will usually be put on the market as soon as possible to minimise the mortgage interest continuing to accrue on the account. A record of the possession may be held on the CML Possessions Register.

CML/Government Statement on Arrears and Possession Procedures

16. In December 1991, after detailed discussions with the Government, the CML reaffirmed that it is the policy of lenders to take possession only as a last resort, and to handle arrears problems efficiently and sympathetically. A formal announcement was made by the Chancellor of the Exchequer in the House of Commons and at a CML Press Conference on 19 December 1991. The announcement referred to the fact that

(a) Where borrowers have suffered a significant reduction in their income but are making a reasonable regular payment, lenders do not seek to take possession.

(b) In the knowledge that income support is paid direct, lenders will not take possession in cases where mortgage interest payments are covered by income support.
17. From October 1995, income support has been paid by the Department of Social Security at a "standard rate" of interest, which may be less than the interest rate charged by the lender. Borrowers will need to make up any shortfall in the mortgage repayment. Some lenders have decided not to participate in the direct payment scheme. In these cases, the borrower will be responsible for passing on the income support for mortgage interest payment to their lender.

Sale of Properties in Possession

18. When selling properties which have been taken into possession lenders are under a duty to obtain the best price reasonably obtainable. A lender is not bound to postpone the sale in the hope of obtaining a better price at some future date; however, the lender should allow sufficient time to permit, for example, proper advertising so that the best price obtainable may be achieved. Mortgage lenders generally use the following administrative procedures for selling properties which have been taken into possession.

Administration

(a) The sale may be dealt with either via a lender's in-house department or through a separate property management company employed by the mortgage lender. Dedicated staff are responsible for co-ordinating the sale of properties in possession which will include reviewing the offers received from potential purchasers as well as monitoring the condition of these properties and their valuation.

Valuation

(b) A valuation of the property is obtained from either one or two qualified surveyors and another from the appointed estate agent. Prices will be reviewed regularly based on local circumstances.

Estate Agents

(c) Properties are usually marketed through an estate agent in the immediate locality of the property being sold. Agents may advertise properties in the local press, with such advertisements being repeated as and when necessary. Mail shots and national advertising may also be carried out in some cases. In general, lenders do not market these properties as "repossessed properties" and estate agents may be specifically instructed not to do so.

Report on Activity

(d) Estate agents are usually required to report regularly on activity if a property remains unsold. The estate agent will notify a mortgage lender of offers received. Only when satisfied that the best price has been obtained, would the estate agent recommend this offer for acceptance. If the offer is substantially below the asking price, the agent must provide supporting evidence to suggest that this would be the best offer obtained. In practice, all offers are accepted or declined promptly. Where there are a number of very close offers on a property, a sealed bid procedure may be carried out whereby
the person putting forward the best offer would be the successful **buyer**.

**Visits to the Property**

(e) The agent will usually visit the property on a regular basis and ensure that any **necessary** repairs and maintenance to the property are carried out and that the property is secure. When properties are first put up for sale, mortgage lenders will usually arrange that essential repairs, cleaning and tidying of the garden are carried out. Whilst the estate agent will take care of minor repairs which are identified on the regular visits, other repairs usually require the approval of the mortgage lender. Where this work is carried out, estate agents will be required to obtain competitive estimates. Prospective purchasers will normally be accompanied by the agent when viewing a property.

**Auction**

(f) Properties in possession may be sold via auction. These properties are reviewed relative to sales experience and the length of time on the market. There are occasions when properties may be sold by auction because either the auction is specifically targeted at the type of property in question, eg a period type of residence, or the property will generally appeal to the speculator market because of its condition. Such properties are referred to an appropriate auctioneer. A catalogue would be issued and the properties are available for viewing.

**Indemnity Insurance**

20. Mortgage indemnity is insurance which a lender may take out for its protection where a high percentage loan is made. This insurance policy covers the situation where, at some future stage, the lender has to repossess the property and sell it and the lender suffers a loss. For example, if the property is sold for less than the amount of the borrower’s outstanding mortgage (including accrued interest and costs) the lender can claim on the mortgage indemnity to recover some or all of its loss. The basic security for the mortgage is the property. The mortgage indemnity, therefore, acts as a form of additional security for the lender. It provides no protection to the borrower who gains no benefit, other than a higher loan advance than would otherwise have been granted.

21. In most cases, the mortgage indemnity will cover the lender only for part of its loss and, in addition, once an insurer has paid a mortgage indemnity claim, it gains the right of subrogation; this means that the insurer can reclaim from the borrower any money it has paid to the lender under the mortgage indemnity claim. Either the lender or its insurer may take legal action against the borrower to recover the shortfall if the borrower does not repay it voluntarily. In most cases, the lender contacts the borrower to recover the shortfall on behalf of itself and its insurer. This does not mean that the lender recovers the loss twice; **any money paid by the insurer which is subsequently recovered by the lender from the borrower is then passed back to the insurer**.

**Debt Following Mortgage Possession**
What happens to a mortgage debt after a home is repossessed?

22. After a lender takes a property into possession, interest will generally continue to be charged on the mortgage loan until the property is sold. There will also be other costs charged to the mortgage account, including the estate agent’s costs in selling the property and legal costs.

23. The lender has a legal duty to sell the property for the best price that can reasonably be obtained. If this results in a surplus after all the money owed to the lender and any other party with a registered legal interest has been repaid, then this surplus is returned to the former borrower. The lender will send the borrower a detailed final statement of the account and advise the borrower of the date on which the property was sold. This statement will be sent to the borrower’s last known address. The borrower would be able to raise any queries on the statement with the lender.

24. But if the sale proceeds are not enough to pay off the money owing to the lender, the borrower faces a “shortfall debt”, which they still owe to the lender after possession.

What will the lender do if there is a shortfall debt?

25. The action that the lender will take depends on the circumstances. Usually, the lender will contact the borrower as soon as possible after the sale of the property and give a final statement of the mortgage account. This will show the level of debt still owing to the lender. It is important that borrowers keep lenders informed of their addresses after possession so that they receive this information.

26. If there is a shortfall debt, the lender may:
   - immediately invite the borrower to contact them with their proposals to discuss how they might repay the debt; or
   - try to give the borrower some time to get back on their feet financially before contacting them about repaying the debt.

How long after the repossession can lenders seek the recovery of the debt?

27. In England, Wales and Northern Ireland, a lender legally has 12 years in which to contact the borrower to begin the process of obtaining repayment of shortfall debt; this period is usually 5 years in Scotland.

28. However, lenders are committed to fair and sympathetic treatment of people who have suffered the unavoidable loss of their home, and accept that individuals should not face long delays before lenders contact them to discuss repayment of the shortfall. In practice, where a forwarding address is known, most lenders will contact borrowers fairly soon after possession has occurred with a view to agreeing a manageable arrangement for repaying all or some of the debt.

29. In addition, from 11 February 2000, lenders who are members of the Council of Mortgage Lenders have agreed voluntarily that they will begin all recovery action for
the shortfall within the first six years following the sale of a property in possession. Anyone whose property was taken into possession and sold more than six years ago, and who has not been contacted by their lender for recovery of any outstanding debt will not now be asked to pay the shortfall. The Association of British Insurers supports this approach on behalf of the mortgage indemnity insurers. In Scotland, lenders will begin recovery action within five years.

Does this time limit apply to every case?

30. The new time limit does not affect anyone who is already adhering to alternative payment arrangements for the shortfall debt or who has already been contacted by the lender, even if the initial contact was made with them by the lender after six years from the date of the sale of the property in possession. The six year limit only refers to beginning recovery action and does not affect a lender’s ability to recover the shortfall debt over a longer period. If there is evidence of mortgage fraud, the new time limit will not apply.

31. Following the sale of a property in possession, lenders often find it difficult to contact the former borrower to advise them of any surplus monies or shortfall debt. Lenders use a variety of measures to identify where the individual is now living. This might include using tracing agents. Situations can arise where a lender or its third party agent is trying to contact the individual (for example, by letter or telephone) to discuss repayment of the shortfall, but the individual simply chooses to ignore such contact. This is despite the fact that the contact is being made at the individual’s new address. In these cases, lenders will consider that contact has been made for the purposes of the new six year limit. Lenders will also consider that contact has been made where the borrower has responded to the lender’s correspondence. Simply sending the borrower a final statement of the mortgage account alone will not constitute contact. If an individual is unclear whether contact has been made within the six year period, the lender will be able to confirm the position.

32. Where the lender uses a third party debt collection agency to recover the shortfall debt, that agency will be required to comply with this Statement and will remain under the control of the lender. If the mortgage shortfall debt has been assigned to another company, the principles of this Statement will continue to apply.

Independent Advice

33. At the borrower’s request and with their consent, the lender will liaise, wherever possible, with free and independent debt counselling organisations, for example,

* Citizens’ Advice Bureaux, or
* money advice centres, or
* Independent advice centres who are members of the Federation of Independent Advice Centres (FIAC).

Alternatively, the lender will liaise with a borrower’s appointed representative, for example, a solicitor.
34. Lenders recognise that it can often take time for a borrower to receive an appointment with an advice agency and will take this into account when speaking to the borrower about the shortfall debt.

Repayment Arrangements

35. Lenders will look at the borrower’s individual circumstances when discussing repayment arrangements for the shortfall debt. Borrowers may be asked to provide, for example, wage slips and benefit books as evidence of their income. Where borrowers have formed new relationships, only the borrower’s personal income and assets will be taken into account by the lender. If a lender refuses an offer of repayment (whether lump sum or repayment), the lender will provide full reasons for their decision. Where a lender has a County Court Judgement (taken at the same time as a possession order), this would not be enforced unless and until all negotiations between the lender and the borrower have failed. Lenders will only start legal proceedings to recover the shortfall debt where negotiations have not managed to reach an acceptable agreement for both parties.

6/11/00