

## **GUIDANCE ON HOW TO DEAL WITH MORTGAGE SHORTFALLS?**

### **Mortgage Shortfalls**

#### **My property has been repossessed why do I still owe money?**

This is most likely due to the fact when the property has been sold; the money acquired has not been enough to pay off any secured loans or the mortgage in full to the lender. Within these debts can contain any interest or monthly payments that have accumulated during the selling of the property. You are also accountable for all the legal as well as estate agent charges up until the final selling.

The unsettled funds are known as a **'Mortgage Shortfall'**.

#### **Is there a time frame on which the creditors can try and retrieve the money?**

There is a ruling under the Limitation Act 1980, which prevents the creditors having an infinite amount of time collect their debts. The debt becomes 'statute barred' if the time frame passes by. The Court of Appeal has decided upon specific time periods available for mortgage shortfalls.

#### **What is the length of time for Mortgage Capital?**

- This is the money you have initially borrowed.
- This allows a 12-year period for creditors to take court action to recover the debt.
- Section 20 (1)

#### **What is the length of time for owing interest?**

- This is regarding interest charged on top of the money borrowed before and after the property has been sold.
- This allows a 6-year period for creditors to take court action to recover the debt.

#### **What initiates the time period?**

- From the 'cause of action'
- 6 or 12 years makes no difference to when the time period begins.
- This is not a rule for all other debts and may differ.

**‘Cause of Action’ regarding Capital:**

The time period begins when the creditor is owed his debt the total charge. In most cases this occurs when the individual in debt has missed two or three instalments.

**‘Cause of Action’ regarding Interest:**

The time period begins when you are due to pay the interest.

**‘Cause of Action’ regarding when the keys have been handed over:**

The time period begins depending on arrears. If you do not possess any arrears the time limit begins upon exchange of keys. If arrears are present, the limits stated above will come into play.

**Through making instalments to the interest debt can I increase the time period?**

This will not increase the time period between you and your creditor as any payments will be considered as a contribution to the capital aspect of the debt. Therefore any instalments made will duly re-start the 12-year limitation time frame from the beginning.

**Is there an extension of time if I recognise and accept the debt?**

In a written document to the creditor, recognising and accepting responsibility for the debt, the six or twelve-year period will begin again. There are varying regulations if the property is shared with another person.

1<sup>st</sup> April 2013 – **Financial Conduct Authority (FCA)** took responsibility for mortgage lending and any difficulties in current mortgages. With regard to their stance on Mortgages and Home Finance, their book on conduct (MCOB) states a creditor ‘must deal fairly with any customer who has a mortgage shortfall debt.’ A creditor if retrieving the shortfall debt needs to inform you in writing and this must be done inside of the six-year period after your property has been sold.



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The Council of Mortgage Lenders (CML) state in their regulations ‘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 the outstanding debt, will not now be asked to pay the shortfall.’

All these regulations do not run alongside each other. The MCOB and CML are detached from the Limitation Act. By this idea, instalments or recognising you owe money through documentation is not essential if you are attempting to use the MCOB or CML regulations to dispute the debt in question. If the Limitation Act cannot legally dispute your debts then this is where the other regulations are handy.

#### **Can I use the Limitation Act 1980?**

In the case of your last deposit towards the debt, or the last time you recognised the debt was more than 12 years ago, the Dispute liability for a mortgage shortfall sample letter would apply. Within this letter it will show the debt is non recoverable under the Act.

#### **Which time limit is applicable to me?**

It is important you understand which debt you are categorised in whether that be the capital or interest debt. For the majority of cases this tends to be capital and therefore the 12-year time period.

#### **Can I use the Council of Mortgage Lenders Policy?**

- You must find out if the creditor is a member of the CML.
- If your house was sold before 11<sup>th</sup> February 2000 and it has been in excess of six years before any discussions were had with the creditors, the CML will apply.
- If the creditor has discussed with you a mortgage shortfall within the period of six years since the property was sold, it is key you received a document regarding this.
- If the document was not received then you should submit a complaint with the creditor in the first instance.
- Further to this a complain can be made with the Financial Ombudsman Service

### **What are the steps if the mortgage is in joint names?**

- If the other individual recognizes the debt as his or her own, it does not affect you.
- If the other person has paid an initial fee toward the arrears, the time frame will begin from the start.
- This will now include you both.

### **Should I clarify from my creditors how much I am in debt?**

Yes, should clarify exactly what the creditors believe you to owe and seek a detailed document stating this. Make sure you agree with all the data and whether you think the creditor has followed the correct regulations when doing so.

### **What information should I ask for?**

- Thorough documentation on how the properties valuation came about.
- A definite selling price regarding the property.
- A list of anything extra including solicitor, court or agent charges.
- An explanation as to how the interest has been calculated, before and since the sale.

### **What does the Data Protection Act allow me to do?**

- The 'right of subject access'.
- Data regarding the information about the mortgage shortfall account.
- A fee of £10 is applicable for the documents.

### **What is Mortgage Indemnity Insurance or Mortgage Indemnity Guarantee?**

- It is a method the creditors used when covering a mortgage to protect them from any losses.
- In most cases the creditor receives this as one payment fee when the mortgage is authorized.
- Alternatively the fee is withdrawn from your mortgage advance in that instance.

### **Does the indemnity help me against the creditors?**

- If a mortgage indemnity insurance policy is applicable, clarify with your creditor if they have made a claim.
- In essence this could potentially reduce the cost payable to the creditor on the mortgage.

### **What if I disagree with the payment figure the creditor has achieved?**

All creditors, when selling your property, must gain the best price possible. If you disagree that they have not sold the property for the best price, you can further disagree with the figure they are quoting that you are indebted to.

From this point, you have a period of six years from the selling of the property, in which to gain evidence to back up your argument and then make a claim. A type of evidence you should look for is alternate valuations that have been made on your property.

### **You may have a claim if you agree with any of the following:**

- Poor marketing ensuring a poor selling price.
- Market value was much greater on the property than it was sold at the time.
- The property was already in the process of being sold until the lender refused, repossessed it and then sold it at a significantly decreased price.
- The mortgage company should have rented out the property when no one was living there for a period of time and that money used to decrease the debt.
- The property was sold to a related company of the creditor.

### **What is the correct way I should make a complaint?**

In the first instance you should submit a complaint with the creditor who you have been negotiating with regarding your mortgage shortfall. In the second instance, if they have not satisfied you, you can submit a complaint with the Financial Ombudsman Service.

Predominantly, mortgages withdrawn post 31<sup>st</sup> October 2004 will likely be regulated. The same aspect applies, where the creditor had an initial fee over the home and further the property is occupied by at least 40% with immediate family members or yourself. However, this does not lend itself to secured loans who are regulated by the Consumer Credit Act 1974.

### **What if my shortfall debt is not statute-barred?**

If your debt is not statute-barred you can normally deal with it as a non-priority debt and along the similar lines as you would a credit card or a catalogue arrear. The reason for this is due to the fact your creditors can do very little in the way of retrieving the funds.

### **Can I make an installment agreement with my creditor?**

It is possible for you to arrange an agreement with your creditor. You will need to communicate with them a budget sheet so that you can agree on an affordable payment plan that one you can afford and two they are happy with.

### **Is it possible my creditor will withdraw the debt?**

This will only take place if the mortgage shortfall is great and the budget sheets you have discussed with the creditors portray you can only manage either limited or next to nothing in terms of a payment plan for the debt. In the case of an illness or disability affecting your budget further communicate this with the creditor. In addition, if your housing circumstance has changed and you know longer acquire it as an asset inform the creditor of this to.

### **Is it possible to make a Full and final settlement plan?**

This can be agreed upon where it is very unlikely you will ever pay the full debt required. A part payment plan in the form of a full and final settlement may be an option. This requires an agreement to be made between you and the creditor of an amount acceptable and the way in which you will pay this through installments.

### **Are there any implications to my credit rating?**

July 2010, the CML changed their policy meaning they do not keep documentation on anyone who has had their property repossessed. Any documents that were held on the register and therefore communicated with the reference agencies has been withdrawn but in regards to the credit file anything current could well be present.

In the case of having outstanding payments regarding your mortgage, this will show up on your credit file as 'default' and will maintain on the record for a time frame of six years. It is not uncommon for information on your payments and how much specifically is outstanding to appear within. Therefore, having this on your file is most likely to have adverse affects on you trying to gain a new mortgage.

### **Is it possible for my creditors to pursue court action?**

If the proposals between you and your creditor fail and they do not see a way to which they can retrieve their money they may wish to take further action and in this case the use of the County Court. Through the Court it can give you the chance to offer up a repayment plan through installments. If any court forms are produced, it is imperative you send a reply before the cut-off date, in most cases this is a 16-day period after the post-mark accompanying the forms.



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### **Can my creditors take my judgment to High Court?**

This is only possible if the debt is not a consumer credit agreement. The documentation needed for the High Court is complex and you may want to seek assistance and further if you wish to settle your arrears through the idea of a payment plan.

### **Could Bankruptcy be an option?**

Bankruptcy could be an option if you have unassailable debts that you know you simply cannot pay off. The fees just to be declared bankrupt are also something to think about. Creditors, if indebted more than £750 can push you toward bankruptcy. This tends to occur when the creditor believes you to have property that could be sold in order to settle the debts.

### **What is a Debt Relief Order?**

A Debt Relief Order lends itself typically to those individuals who have limited assets, who are not homeowners and those who obtain a small overall income. A DRO is seen as a more affordable alternative to bankruptcy. The DRO allows you a period of 12 months, where in most cases, your creditors are prevented from retrieving the debts. Furthermore, once the period has ended, the debts are disregarded. The entire debt total must come to less than £15000.