HOUSE OF COMMONS LIBRARY

BRIEFING PAPER

Number 04769, 12 February 2021

Mortgage arrears and repossessions (England)

By Wendy Wilson
Hannah Cromarty
Cassie Barton

Contents:

Contents

Summary

This briefing paper outlines temporary measures to assist homeowners to manage their mortgage payments during the coronavirus (Covid-19) outbreak. It considers lenders' obligations towards homeowners who are struggling with their mortgage payments, outlines possible sources of advice for mortgagors, and discusses the mortgage support schemes that were introduced in response to the 2008 financial crisis.

If a homeowner fails to keep up with their mortgage payments, the mortgage lender may seek possession of the property through the courts in order to sell it and repay the loan and mortgage arrears. In recent years the number of mortgaged properties taken into possession in the UK has been historically low, with the majority of borrowers paying their mortgages on time and in full. The fall in the number of properties repossessed since 2009 coincides with lower interest rates, a proactive approach from lenders in managing borrowers in financial difficulties and other interventions, such as the introduction of a Mortgage Pre-Action Protocol.

Coronavirus (Covid-19): mortgage support measures

The coronavirus (Covid-19) pandemic has had profound effects on the UK economy, which, in turn, have had unprecedented impacts on household finances. The Government, Financial Conduct Authority (FCA) and mortgage lenders have put in place temporary measures to assist homeowners to manage their mortgage repayments and thereby avoid potential repossession action:

- On 17 March 2020, the Chancellor announced a commitment by mortgage lenders to offer homeowners a "holiday" of up to three months from their monthly mortgage payments. This meant that **homeowners could defer up to three months' mortgage payments to a later date.**
- Subsequently, on 22 May 2020, the FCA advised lenders that support should still be offered to homeowners where needed and this could involve **an extension of the mortgage payment holiday period for a further three months**. Mortgagors had up to 31 October 2020 to request an initial or further payment holiday.
- Following the Prime Minister's announcement of a second national lockdown, the FCA indicated its intention to extend the availability of payment deferrals. On 17 November 2020, the FCA published updated Payment Deferrals Guidance to firms setting out the enhanced support lenders are expected to provide to mortgage borrowers experiencing payment difficulties related to coronavirus. **Borrowers will be able to access payment deferrals up to a maximum of 6 months and have until 31 March 2021 to apply for an initial or a further payment deferral**. All payment holidays must end by 31 July 2021.
- To protect homeowners from repossession, the FCA has confirmed that **a moratorium on the enforcement of lender repossession will remain in place until 1 April 2021**, except for in exceptional cases (such as a borrower requesting proceedings continue).
- The FCA has also published Tailored Support Guidance setting out how firms should provide **tailored support** to mortgage borrowers who have taken six month's mortgage holiday and continue to face ongoing financial difficulties due to coronavirus**.** The FCA expects lenders to exercise appropriate tolerance (forbearance) where this is in a customer's interest, taking into account their individual circumstances.

- On 9 June 2020, the Government announced **an additional £37.8 million funding for debt advice providers, bringing the total to £102 million in 2020/21**.

According to UK Finance, **130,000 mortgage payment deferrals were in place at the end of December 2020, down from a peak of 1.8 million in June 2020.**

There is evidence that these interventions have helped to mitigate the impact of the Covid-19 outbreak on household finances. At December 2020, the number of mortgages in arrears of 2.5% or more of the total outstanding balance had increased by 11% compared with the same quarter a year previously and repossession activity was low.

The coronavirus mortgage support measures are temporary. Given the current economic challenges, increase in the number of people claiming unemployment-related benefits, and predictions of further rises in unemployment, it is possible that further interventions may be required if an increase in repossessions is to be avoided.

Lenders' obligations

Mortgage lenders are required to follow certain steps when a homeowner falls into arrears. Before they seek possession of the property lenders must demonstrate that they have done everything which they are required to do under the Financial Conduct Authority's (FCA) Mortgage Conduct of Business (MCOB13) rules to make possession a matter of last resort. Mortgage lenders must also adhere to the Mortgage Pre-Action Protocol which sets out clear standards expected when lenders bring repossession cases to court.

The FCA has been working with the industry to help it improve and strengthen arrears management practices.

Assistance for households

Advisory bodies tell anyone with concerns about managing their mortgage to contact their lender as soon as possible to discuss the options available. There are several charities and organisations providing free, independent debt advice.

The Government's Support for Mortgage Interest (SMI) scheme provides financial assistance towards owner-occupier costs (principally mortgage interest payments) for claimants of certain means-tested benefits. Since April 2018, SMI has been paid in the form of an interest-bearing loan, secured against the mortgaged property and repayable when the property is sold or ownership changes. SMI payments for working age claimants are subject to a 39-week waiting period and a mortgage cap of £200,000.

Commentators have highlighted that support for mortgage costs through the social security system is limited when compared to the support available for renters, and have called on the Government to strengthen the financial support available through the SMI scheme.

Some mortgage lenders offer Assisted Voluntary Sale support to homeowners with mortgage arrears to enable them to sell their home and avoid repossession.

Low income households facing possession proceedings may be entitled to free legal aid. The Legal Aid Agency funds Housing Possession Court Duty Schemes (HPCDS) throughout England which provide free emergency legal advice and representation on the day of a possession hearing, regardless of financial circumstances.

Historic schemes to support homeowners

Additional, temporary, measures were introduced as a direct response to the 2008 financial crisis in order to support homeowners struggling with their mortgage payments and to minimise the number of repossessions. These measures included:

- A **Preventing Repossessions Fund** – to enable local authorities to offer small loans to mortgagors at risk of repossession.
- A **Mortgage Rescue Scheme** – which was administered by local authorities and typically involved a housing association purchasing the house, or a portion of it, and then renting it back to the original owner, who could continue to live there as a tenant.
- A **Homeowner Mortgage Support scheme** – which enabled eligible homeowners to defer a portion of the monthly interest payments on their mortgage for up to two years.
- Changes to the **Support for Mortgage Interest (SMI) scheme** to strengthen support for those affected by the economic downturn, including reducing the waiting period for SMI to 13 weeks and increasing the mortgage cap to £200,000 for new working age claimants.

Increased lender forbearance, together with the various Government schemes to support householders, enabled many homeowners to avoid repossession and stay in their homes.

Sale and rent back schemes

The private sector also developed its own mortgage rescue response in the form of "sale and rent back" (SRB) schemes. These schemes involve private companies buying people's houses at discounted prices and keeping the ex-owners in situ as tenants. Although these schemes provide individuals with a quick and easy source of cash, they were, until 2010, unregulated and could leave ex-owners facing substantial rent charges or, ultimately, eviction, as they have no long-term security of tenure as assured shorthold tenants.

1. Coronavirus (Covid-19): mortgage support measures

The Government has put in place a package of measures, including job protection schemes and temporary changes to the social security system, to support household incomes during the coronavirus (Covid-19) outbreak. In addition, temporary measures have been implemented to assist homeowners to manage their mortgage repayments and thereby avoid mortgage arrears and potential repossession action.

1.1 Mortgage payment holidays

On 17 March 2020, the Chancellor announced a series of measures to help businesses and individuals, including a **commitment by mortgage lenders to offer homeowners a "holiday" of up to three months from their monthly mortgage payments**:

> Mortgage lenders have agreed they will support customers that are experiencing issues with their finances as a result of Covid-19, including through payment holidays of up to 3 months. This will give people the necessary time to recover and ensure they do not have to pay a penny towards their mortgage in the interim.[1]

The payment holiday, or payment deferral as it is also known, meant that homeowners could defer up to three months' mortgage payments to a later date.

A **'payment deferral'** means an arrangement under which a lender permits the customer to make no or reduced mortgage payments for a specified period without being considered to be in payment shortfall.

The independent Financial Conduct Authority (FCA) is responsible for the regulations that are in place to protect customers in their dealings with financial services. The FCA issued guidance for the sector in March 2020 which was intended "...to describe the standards of skill and care we consider may reasonably be expected of lenders in the mortgages market in the current exceptional circumstances of coronavirus."[2]

Subsequently, on 22 May 2020, the FCA advised that support should continue to be offered to homeowners where needed and this could involve an **extension of the mortgage payment holiday period for a further three months**.[3] Homeowners had up to 31 October 2020 to request an initial or further payment holiday.[4]

On 31 October 2020, as part of a further package of financial support in response to the coronavirus outbreak, the Government announced an extension of the period in which mortgage payment holidays can be taken.[5] Following a consultation on draft guidance, the FCA published updated Payment Deferrals Guidance (17 November 2020) setting out the enhanced support firms are expected to provide to mortgage borrowers facing temporary payment difficulties due to circumstances

The FCA first published Mortgages and coronavirus: our guidance for firms on 20 March 2020 and updated it on 4 June and 16 June 2020. The Payment Deferrals Guidance replaces the earlier guidance with effect from 20 November 2020.

1 HM Treasury Press Release, 17 March 2020
2 FCA, Mortgages and coronavirus: our guidance for firms, 20 March 2020
3 FCA Announces support for customers who are struggling to pay their mortgage due to coronavirus, 22 May 2020
4 Ibid.
5 HM Treasury, Furlough Scheme Extended and Further Economic Support announced, 31 October 2020

related to coronavirus. In short, **borrowers will be able to access payment deferrals up to a maximum of 6 months and have until 31 March 2021 to apply for an initial or a further payment deferral**.[6] All payment holidays must end by 31 July 2021.

The FCA's Mortgages and coronavirus: information for consumers (last updated 17 November 2020) explains in more detail how the extended mortgage payment holiday period will operate:

> **Applying for a payment holiday**
>
> You can request a payment holiday of up to 6 months in total, but lenders can only agree a payment holiday of up to 3 months at a time. They can then agree to renew your payment holiday after the first 3 months, as long as this doesn't take you over the 6-month limit.
>
> You need to apply by 31 March 2021 and all payment holidays must end by 31 July 2021. **Remember, carefully consider if you need a payment holiday – and make payments if you can.**
>
> - If you are newly affected by coronavirus, and you want to benefit from the full 6 months available, you should apply in good time before your February 2021 payment is due. Your payment holiday will then run between February and July.
> - If you've already taken payment holidays of less than 6 months, you have until 31 March 2021 to apply for another payment holiday.
>
> After 31 March 2021, you can extend an existing payment holiday up until the 31 July 2021, as long as:
>
> - it doesn't go over the 6-month payment holiday limit
> - there are no breaks in the support
>
> You won't be eligible to apply if you've already had payment holidays of 6 months overall. Instead, you can ask for tailored support from your lender.[7]

Affected customers are advised to contact their lender to request a payment holiday. There is no specific process for contacting lenders. Lenders should also proactively ask customers if they require a mortgage holiday if, during an interaction, the customer indicates that they are experiencing, or expect to experience, payment difficulties as a result of circumstances relating to coronavirus. The guidance states that "there is no expectation under this guidance that the firm investigates the circumstances surrounding a request for a payment deferral before agreeing one."[8]

---

6 'FCA confirms support for mortgage borrowers impacted by coronavirus', FCA Press release, 17 November 2020

7 FCA, Mortgages and coronavirus: information for consumers, last updated 17 November 2020

8 FCA, Mortgages and Coronavirus: Payment Deferral Guidance, 17 November 2020, para 5.5

Alternative options to a payment deferral may be offered if in the best interests of the customer, including:

- a sustainable longer-term solution, such as an extension of the term or an alternative product; or
- more favourable forms of assistance, such as reducing or waiving interest.[9]

Lenders should give customers adequate information to understand the implications of a payment holiday, including the consequences (if any) for the total amount payable under the mortgage contract, the term of the mortgage contract and the amount of contractual monthly instalments. How deferred mortgage payments are worked out varies by lender; the impact on the length of the mortgage term and future payments can therefore vary. The Money Advice Service's A guide to coronavirus mortgage payment holidays provides further information and a 'mortgage payment holiday calculator'.

Lenders should ensure that no additional fees or charges (other than accrued interest) should be levied in connection with the payment holiday.[10]

Mortgage payment holidays granted up to 31 March 2021 should not be recorded as arrears, nor should they have any negative impact on the customer's credit score.[11]

How many customers have taken a mortgage payment holiday?

According to UK Finance, **130,000 mortgage payment deferrals were in place at the end of December 2020, down from a peak of 1.8 million in June 2020**.[12]

Approximately 80% of those whose mortgage payment deferral has come to an end have returned to making their mortgage payments.[13]

Support for mortgage borrowers after 31 March 2021

On 17 November 2020, the FCA published Tailored Support Guidance setting out how firms should provide **tailored support** to mortgagors who have exhausted the support available through payment deferrals and continue to face ongoing financial difficulties, as well as those

9 FCA, Mortgages and Coronavirus: Payment Deferral Guidance, 17 November 2020, section 3
10 FCA, Mortgages and Coronavirus: Payment Deferral Guidance, 17 November 2020, para 5.1
11 FCA, Mortgages and coronavirus: information for consumers, last updated 17 November 2020. Nb. credit files are not the only source of information that lenders can use in lending decisions. Factors other than payment history may also be relevant.
12 UK Finance, Arrears and possessions, 11 February 2021
13 Ibid.

whose financial situation may be newly affected by the Covid-19 pandemic after 31 March 2021.[14]

The FCA expects firms to deliver the following outcomes:

- Customers receive appropriate forbearance that is in their interests after consideration of their individual circumstances.

- Firms support their customers through a period of payment difficulties and uncertainty, including by considering their other debts and essential living costs.

- Firms recognise vulnerability and respond to the particular needs of vulnerable customers.

- Firms have systems, processes and adequately trained staff, with any staff incentives aligned with providing their customers with the help they need.

- Customers should receive the support they need in managing their finances, including through self-help and money guidance. Firms should signpost or refer them to debt advice if this meets their needs and circumstances.[15]

Tailored support, including any further mortgage payment holidays agreed to after 31 March 2021, will be reported to the Credit Reference Agency (CRA) and reflected on a customer's credit file in the normal way. Lenders should inform borrowers where this will be the case:

> For all customers, we expect firms to report any further forms of support, whether or not it follows after a payment deferral, to credit files in the usual way except where this would be inconsistent with paragraph 1.22 of the Payment Deferral Guidance. This includes, for example, where it agrees a payment deferral (without changing the sums due under the contract) otherwise than under the Payment Deferral guidance.
>
> Firms should ensure that they are clear about the credit file implications of any forms of support they offer customers, including rescheduling or refinancing of accounts.[16]

1.2 Repossessions

In March 2020, **the FCA advised lenders to exercise forbearance during the Covid-19 emergency**:

> Firms should not commence or continue repossession proceedings against customers at this time, given the unprecedented uncertainty and upheaval they face, and Government advice on social distancing and self-isolation. This applies irrespective of the stage that repossession proceedings have reached and to any step taken in pursuit of repossession. Where a possession order has already been obtained, firms should refrain from enforcing it.

In the context of a mortgage process, **forbearance** is an agreement between the lender and the borrower to delay initiating repossession proceedings, for example if the borrower agrees a payment plan to repay the mortgage arrears within a certain time.

[14] FCA, Mortgages and coronavirus: Tailored Support Guidance, last updated 27 January 2021
[15] Ibid., para 1.10
[16] Ibid., paras 4.6 and 4.7

> We consider that commencing or continuing repossession proceedings at this time is very likely to contravene Principle 6 and MCOB 2.5A.1R - absent exceptional circumstances (such as a customer requesting that proceedings continue). We will not hesitate to take appropriate action where necessary.
>
> Firms should also ensure that their customers are kept fully informed, and discuss with them the potential consequential impacts of their suspending any moves towards repossession. For example, the effect of remaining in the property on the customer's remaining equity should be explained. See our information for consumers regarding mortgages during the coronavirus situation.[17]

The FCA's announcement on 22 May 2020 confirmed that the suspension of repossessions proceedings against homeowners would continue to 31 October 2020."[18]

The FCA subsequently confirmed that a **moratorium on the enforcement of lender repossession**, except for in exceptional cases (such as a borrower requesting proceedings continue) would remain in place until 31 January 2021.[19] This was subsequently extended **to 1 April 2021**:

> A firm should not absent exceptional circumstances (such as a customer requesting that the proceedings continue) enforce repossession and should not seek, or enforce, a warrant for possession or a warrant of restitution before 1 April 2021.
>
> But firms may commence or re-commence and continue repossession proceedings, up to and including obtaining a possession order, as long as they act in accordance with this guidance, MCOB 13, and applicable pre-action protocols.
>
> There is no 'one-size-fits-all' approach to how long firms should offer forbearance before starting a court process but action to seek possession should be a last resort and not be started unless all other reasonable attempts to resolve the position have failed.
>
> Firms should be mindful of the need for fair and appropriate treatment of customers who may be particularly vulnerable, including as a result of circumstances related to coronavirus. Firms should consider carefully the potential impacts on customers of ongoing possession proceedings when considering whether it is appropriate to commence or pursue repossession proceedings in a particular case at a time when a warrant for possession will not be sought.[20]

1.3 Debt advice

The FCA expects firms to help customers understand what types of debt help or money guidance are available. They can do this by signposting or referring them to appropriate money guidance, self-help tools or debt advice in a timely manner.[21]

---

17 FCA, Mortgages and coronavirus: our guidance for firms, 20 March 2020
18 FCA Announces support for customers who are struggling to pay their mortgage due to coronavirus, 22 May 2020
19 FCA, Tailored Support Guidance, 17 November 2020
20 FCA, Tailored Support Guidance, 27 January 2021, paras 7.2-7.5
21 FCA, Mortgages and coronavirus: Tailored Support Guidance, 17 November 2020, section 8

On 9 June 2020 the Government announced an additional £37.8 million funding for debt advice providers in 2020/21. The Money and Pensions Service (MaPS) is overseeing the allocation of the funds, including to charities, for debt advice and other money guidance services. The additional funding brings MaPS' total budget for debt advice in 2020/21 to £102 million.[22]

Responding to the announcement, Chief Executive at MaPS, Caroline Siarkiewicz, said:

> The impact the Coronavirus pandemic will have on people's financial wellbeing is significant and will continue for some time. We know there will be increased demand for free, expert debt advice services over the coming months and this extra funding will help to ensure that more people can access help more quickly. Our MaPS services are here to provide support for people when they need it and to help them navigate the tricky months ahead.[23]

In response to a written parliamentary question in June 2020 on household debt, the Government said it "is conducting on-going work to understand and monitor the current and future effects of COVID-19 on consumer debt".[24]

1.4 Further mortgage support measures?

The current coronavirus mortgage support measures are temporary. Given the current economic challenges, increase in the number of people claiming unemployment-related benefits,[25] and predictions of further rises in unemployment, there may be further pressure on some households' ability to maintain existing credit commitments.

It is possible that further interventions may be required if an increase in repossessions is to be avoided. Measures could potentially include:

- further targeted mortgage holidays;
- guarantees to offset possible future lender losses; and
- increased social security support for homeowners in difficulty.[26]

Section 4 of this paper outlines the mortgage support schemes that were implemented by the last Labour Government in response to the 2008 financial crisis.

Several commentators have called on the Government to strengthen the financial support available to homeowners through the Support for Mortgage Interest (SMI) scheme, which provides interest-bearing loans to eligible households to assist with mortgage interest payments (see section 3.5 for further information).

---

[22] HM Treasury, Almost £38 million support package for debt advice providers helping people affected by Coronavirus, 9 June 2020

[23] Ibid.

[24] Written PQ 57892 15 June 2020

[25] House of Commons Library briefing paper CBP08748, People claiming unemployment benefits by constituency, 13 October 2020

[26] UK Collaborative Centre for Housing Evidence, After coronavirus, can the housing market support economic recovery?, Blog by Professor Ken Gibb and Professor Moira Munro, 29 July 2020

The Money Advice Trust Director of External Affairs, Jane Tully, has pointed out that there is a limit to what the FCA and lenders can do to prevent repossessions, and called for reform of the SMI scheme:

> The Government needs to step up by closing the gaps in the mortgage safety net by reforming the Support for Mortgage Interest scheme – including reducing the 39 week wait for payments to13 weeks, and increasing the £200,000 mortgage cap that was set 11 years ago and has not been updated since.[27]

The Joseph Rowntree Foundation has also urged the Government to reduce the qualifying period for SMI, noting that support for mortgage costs through the social security system is limited when compared to the support available for renters.[28]

In its report - From SMI to Mortgage Support: How to help struggling homeowners through the pandemic (September 2020) - the Centre for Policy Studies (CPS) argues that the SMI scheme needs urgent reform to support low-income homeowners through the Covid-19 pandemic, and more generally to improve the benefits system so that it better supports struggling homeowners. The CPS contends that supporting low-income homeowners to remain in their homes is a more cost-effective policy than supporting such households through Housing Benefit if they are forced to move into the rented sector.

The CPS proposes that the Government should:

- abolish the nine-month waiting period for SMI, so that it is available from day one.
- pay the first three months of SMI as a grant, not a loan, and charge no interest on the next nine months of any claim.
- allow people to claim SMI while moving into work, in order to remove the current cliff edge created by the loss of SMI where any amount of earnings are received.
- ensure that lenders automatically make people who are at risk of losing their homes aware of the SMI scheme.
- provide for a two-year time limit on claiming SMI for claimants who are able to work and are not receiving a disability-related benefit, to ensure that people do not remain in homes they cannot afford in the long-term.

Welcoming the report, Policy and Partnerships Manager at the Joseph Rowntree Foundation, Darren Baxter, said:

> Even before coronavirus hit, a third of homeowners were living in poverty. And as the economic fallout from the pandemic grows, that number is likely to rise. With the deadline for applying for a mortgage holiday rapidly approaching, now is the time for government to take swift action.
>
> Reforming the Support for Mortgage Interest scheme is a targeted and cost-effective way of preventing struggling homeowners from

27 Money Advice Trust, FCA's proposals "may not be enough" to prevent serious mortgage difficulty beyond October, 26 August 2020

28 JRF, Coronavirus – it's unthinkable that anyone should be made homeless now, 27 March 2020

> being pulled further into poverty. This crisis has shone a spotlight on just how important a safe, secure and stable home is. The government's focus must be on ensuring people can stay in their homes, whether they be homeowners or renters.[29]

The Government confirmed in response to a written parliamentary question on 7 September 2020 that it had no plans to amend the 39-week qualifying period for SMI in response to the Covid-19 outbreak.[30]

[29] Rightsnet, Reform of support for mortgage interest loan scheme should include abolition of waiting period and an initial three-month grant, says Centre for Policy Studies, 29 September 2020 [subscription required]

[30] Written PQ 84286 7 September 2020

2. Trends in arrears and repossessions

Despite affordability pressures created by the Covid-19 pandemic, mortgage arrears had not substantially increased by the end of 2020 and repossession activity was low. This is attributable to the provision of payment deferrals by mortgage lenders, and the FCA's advice to lenders not to pursue repossessions.

2.1 Arrears

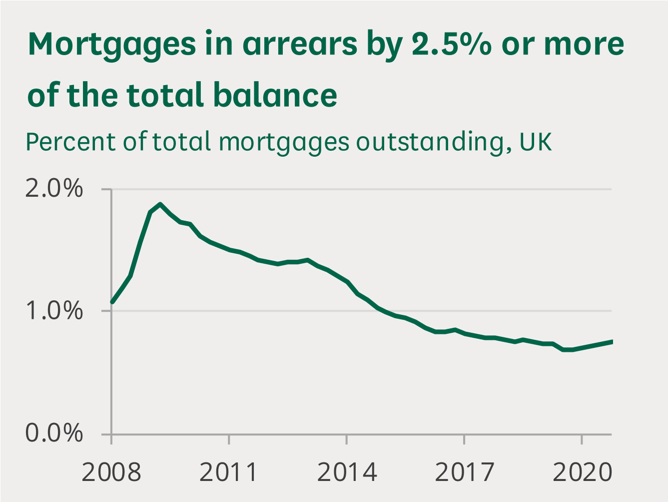
Extent of arrears in the UK

The industry body, UK Finance (formerly the Council of Mortgage Lenders), publishes quarterly figures on the number of mortgages in arrears in the UK. Pressures arising from the Covid-19 outbreak had not translated into a rise in arrears by the end of June 2020, although the number in arrears has risen somewhat in the latter half of 2020. UK Finance attributes the lack of a substantial rise to deferrals granted by mortgage lenders:

> Since March 2020, mortgage lenders have been offering payment deferrals to customers and buy-to-let landlords where Covid-19 has impacted their ability to meet their monthly mortgage payments. 130,000 mortgage payment deferrals were in place at the end of December 2020, broadly stable since late October but down from a peak of 1.8 million in June 2020. Approximately 8 in 10 have returned to making their mortgage payments.[31]

At the end of December 2020, UK Finance reports that there were approximately 83,260 mortgages in arrears of 2.5% or more of the total outstanding balance. This represents around 0.8% of all mortgages in the UK. It also represents a rise of 11% compared with the same quarter a year previously. Around 28,120 mortgages were in arrears of more than 10% of the outstanding balance (0.3% of all mortgages).

These figures describe all mortgages, including Buy-to-Let mortgages. Around 77,410 homeowner mortgages were in arrears of 2.5% or more of the outstanding balance, and around 26,660 were in arrears of 10% or more of the outstanding balance.[32]



Source: UK Finance, Industry Data Table AP2

The chart on the right shows the quarterly trend in the proportion of mortgages in arrears since 2008. Arrears peaked in Q2 2009, with 1.9%

---

[31] UK Finance, Arrears and possessions, 11 February 2021 [Accessed 12 February 2021]
[32] Ibid.

of mortgages in arrears by more than 2.5% of the total balance. Fewer than 1% of mortgages have been in this category since Q3 2015.

Why do households fall into arrears?

The English Housing Survey (EHS), a nationally-representative household survey, asks respondents about their mortgage payments. In the 2018/19 survey, 4.5% of mortgagors said that they experienced some difficulty in making mortgage repayments. This is equivalent to around 310,000 households in England.[33] There were regional variations, with more households reporting difficulty in London (7.0%), the North West (5.8%) and the South East (5.6%).[34]

63% of all mortgagors who reported being in difficulty said they had not sought help or advice about their mortgage. 29% had contacted their lender and 7% had contacted an independent organisation for advice.[35] Of the survey respondents who reported being in arrears, 25% said that lost earnings from sickness or injury was the main reason for entering arrears. 23% said that redundancy or unemployment was the main reason. [36]

2.2 Repossessions

Repossessions in the UK

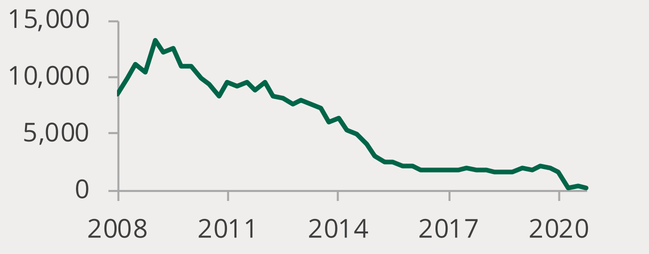
UK Finance also publishes quarterly figures on the number of mortgaged properties taken into possession. The charts on the right shows quarterly trends in the number of properties taken into possession and the proportion of those possessions that were voluntary. Possessions have been declining in the long-term: around 8,000 properties were taken into possession in 2019, compared with 48,900 in 2009.

The fall in the number of properties taken into possession since 2009 generally coincides with lower interest rates, a proactive approach from lenders in managing borrowers in financial difficulties and other interventions, such as the need to adhere to the Mortgage Pre-Action Protocol.[37]

Possessions fell further still from April 2020 onwards. Around 230 properties were taken

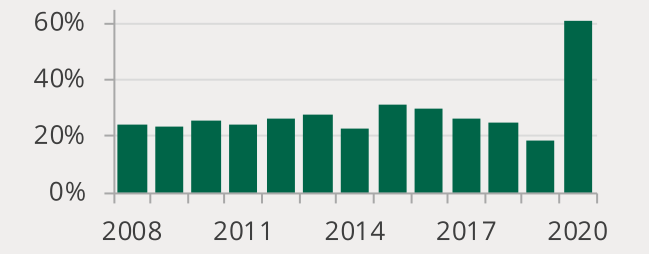
Fewer homes have been taken into possession since Q2 2020…

Homes taken into possession per quarter, UK



…and a higher percentage of possessions were voluntary in 2020

% of possessions that were voluntary, Q4 each year



Source: UK Finance, Industry Data Table AP4

33 MHCLG, English Housing Survey 2018 to 2019: housing costs and affordability, Annex Table 4.4. Figures are an average of responses over three years between 2016/17 and 2018/19.
34 Ibid.
35 Ibid., Annex Table 4.14
36 Ibid., Annex Table 4.12
37 Ministry of Justice, Mortgage and Landlord Possession Statistics: April to June 2020 Bulletin, 13 August 2020, p5

into possession in Q2 2020, followed by 380 in Q3 2020 and 330 in Q4 2020. UK Finance comments:

> The industry moratorium on involuntary possessions remains in place until 1 April 2021, 12 months after it began. Therefore, the low possessions numbers in 2020 for the most part reflect cases where the customer requested the possession to go ahead or where the property was vacant. Possessions will increase in 2021 driven by the backlog that did not occur in 2020 due to the possessions moratorium, almost all of which will have been in train before the pandemic. [38]

Around 61% of possessions in Q4 2020 were voluntary, the highest proportion since at least 2008.

Repossession in the courts in England & Wales

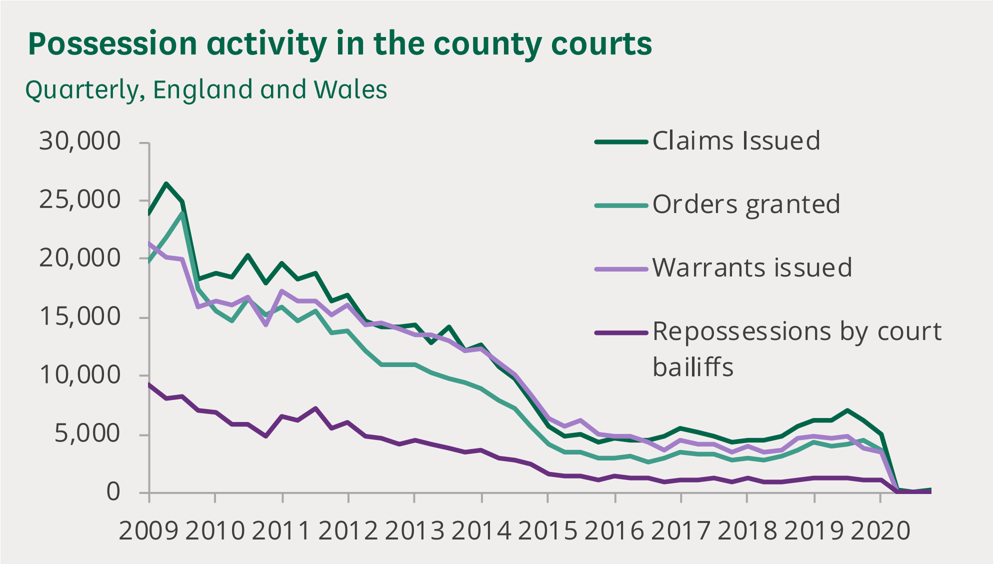
When repossession is not voluntary mortgage lenders may take action through the courts. The Ministry of Justice publishes data on mortgage repossession activity in the county courts in England and Wales. The process has several stages:

- Mortgage lenders must first enter a **claim for possession.**
- Some of these **possession orders** will be **granted by the court.**
- The order must be followed by the issue and execution of a **warrant for possession**. Mortgage lenders do not always follow through with this.
- Nearly half of possession orders made are suspended. This means that they are not enforced as long as the defendant complies with certain terms to do with repayment of the arrears. In some cases, however, **repossessions are carried out by county court bailiffs**.

There has been minimal possession activity in the county courts since Q2 2020. Between 1 March and 31 December 2020, a total of 525 claims for possessions were entered; 200 orders were granted; 79 warrants were issued, and 7 repossessions were carried out by court bailiffs. These activities typically number in the thousands in each quarter.

Court action on repossession had been in decline before 2020. Possession claims issued peaked in 2008 when around 142,700 claims were issued. This fell to a low point of around 18,500 in 2016. Claims increased somewhat after 2016, reaching 25,600 in 2019 (an average of around 6,400 per quarter). Repossessions carried out by bailiffs also peaked at around 35,800 in 2008, falling to around 4,900 in 2019 (around 1,200 per quarter).

[38] UK Finance, Arrears and possessions, 11 February 2021 [Accessed 12 February 2021]



Source: Ministry of Justice, Mortgage and landlord possession statistics: July to September 2020, Statistical tables: Table 1

3. Advice for constituents with mortgage arrears

3.1 General advice

The best way to tackle an individual's debt problems will vary with each case - much will depend on factors such as the amount of debt they have and how far down the line towards repossession their case has gone. Advisory bodies tell anyone with concerns about managing their mortgage to contact their lender as soon as possible to discuss the options available. Speaking to a free, independent debt advice charity/organisation regarding the individual case is also a step worth taking as early as possible. The independent Money Advice Service provides an online Debt Advice Locator to help find debt advice services.

The following websites and leaflets provide information that constituents may find helpful:

- The Money Advice Service website has sections on Mortgage arrears or problems paying your mortgage and Government help if you can't pay your mortgage.
- The National Debtline advice service has a fact sheet on Mortgage Arrears which explains the options to deal with this type of debt and the processes a lender must follow.
- The National Homelessness Advice Service (NHAS) has an advice guide for the public on Are you worried about your mortgage? Get advice now.
- Citizens Advice provides information on Dealing with mortgage arrears and a free online budgeting tool.
- Shelter's website offers information on Mortgage repossession, including the repossession process, ways to prevent it, how to deal with mortgage arrears and where to get advice.
- The GOV.UK website gives information on Repossession.

3.2 Lenders' obligations (avoiding repossession)

One of the key factors behind the relatively low number of repossessions arising from the financial crisis in 2008 was the exercise, by the main mortgage lenders, of forbearance. This was encouraged by the Labour Government at the time:

> Agreement with major lenders to wait at least three months before initiating repossession proceedings, in order to explore all other alternatives. The Government has also welcomed the commitment by lenders to look at all possible options to prevent repossession, such as reducing payments and mortgage rescue schemes.[39]

[39] DCLG, Real help now to support homeowners through difficult times, 24 November 2008

If an owner-occupier falls into mortgage arrears, before they seek possession of a property, lenders must demonstrate that they have adhered to the Financial Conduct Authority's (FCA) Mortgage Conduct of Business (MCOB13) rules to ensure repossession is used as a matter of last resort.

As well as following the FCA rules, mortgage lenders should follow the procedures set out in the Pre-Action Protocol for Possession Claims based on Mortgage or Home Purchase Plan Arrears in Respect of Residential Property before bringing repossession cases to court. This Protocol came into force on 19 November 2008:

> …the Master of the Rolls has approved the Civil Justice Council's protocol for mortgage possession cases, which complements existing regulation, and sets out clear standards that judges may expect of lenders bringing repossessions cases in the courts.
>
> The new protocol makes clear that repossessions should be a last resort. Where possible lenders are expected to try to discuss and agree with borrowers alternatives to repossession. Where a case subsequently comes to court, lenders will be expected to be able to tell the court precisely what they have done to comply with the protocol.[40]

The Protocol was released by the Civil Justice Council alongside this statement. It is "designed to encourage parties to exchange information at an early stage, to encourage early settlement of cases or where that cannot be avoided, more efficient case management. It does not alter parties' existing rights and obligations."[41]

From 1 October 2009 the Mortgage Pre-Action Protocol was amended to extend the steps that a lender is required to take before starting a possession claim for mortgage arrears, and to include a checklist for lenders to evidence their compliance. For example, the submission of a claim for Support for Mortgage Interest (SMI, see section 3.5) was included as an event which requires a lender to actively consider delaying issuing proceedings. The most recent version of the Protocol is dated January 2017.

GOV.UK summarises the actions a mortgage lender must take before they can repossess a home, they must:

- tell the householder how much they owe
- consider a request from the householder to change the way they pay their mortgage
- respond to any offer of payment made by the householder
- give reasons for turning down an offer of payment within 10 days
- give the householder a reasonable amount of time to consider any proposal they make
- give the householder 15 days' written warning if they plan to start court action

40 HC Deb 22 October 2008, c10WS
41 Civil Justice Council, New Pre Action Protocol Launched for Mortgage Possession Cases, Press Notice, 22 October 2008

- tell the householder the date and time of a repossession hearing
- let the council know within 5 days of getting notification of the date of the court hearing, in case the householder needs to apply to the council as homeless[42]

Lenders' performance

The Financial Conduct Authority (FCA), which regulates the conduct of financial services firms, carried out a thematic review of mortgage lenders' arrears management and forbearance. The review findings were published in February 2014.

The review found that arrears management in firms had improved since earlier reviews in 2008 and 2009. In particular, firms:

- place greater emphasis on the need to treat customers in financial difficulty fairly rather than focusing primarily on their own interests;
- offer a wider range of forbearance options; and
- take more time to engage with customers and place a greater focus on borrower affordability.[43]

However, the review also concluded that mortgage lenders and administrators could do more to produce consistently good outcomes for customers:

- cultures which focus on treating customers fairly and delivering good customer outcomes are not always fully embedded at firms;
- firms did not always adopt proactive and forward-looking strategies to identify and effectively engage borrowers in financial difficulty;
- collections agents often followed overly process-driven 'one size fits all' frameworks which failed to allow for sufficiently flexible, judgement-led solutions that consider borrowers' individual needs and circumstances, including specific customer vulnerabilities;
- front-line staff sometimes lacked the experience, knowledge and skill to make informed judgements and decisions in customers' best interests, reflecting their individual financial and personal circumstances;
- firms' governance arrangements are not always sufficiently focused on customer outcomes; and
- rigid systems and processes, due in part to lack of investment, sometimes prevented staff from delivering good customer outcomes and made it difficult for customers to engage.[44]

On next steps following the review, the FCA said:

> We are working with firms and industry bodies to explain our concerns and help them strengthen their arrears management

---

42 GOV.UK [accessed on 10 September 2020

43 Financial Conduct Authority, TR14/3 - Thematic Review - Mortgage lenders' arrears management and forbearance, 25 February 2014, p3

44 Ibid., p4

> practices. We will take action where we observe customer detriment.
>
> We have asked the firms that participated in our review to make specific improvements. Some firms were making positive changes to their approach at the time of our review and others are already acting on our findings.
>
> We recognise that this is a challenging area for the industry and want to work with firms to get this right.[45]

The FCA also carried out a thematic review of lenders' management of long-term mortgage arrears and forbearance. The review findings were published in December 2018.

The FCA found that the firms covered by the review generally treated customers in long-term financial difficulty appropriately. However, it also found some inconsistencies in firms' arrears management practices that may result in a poor customer experience and have the potential to cause harm. The FCA noted that this finding was "disappointing".[46]

Issues identified by the FCA included: incomplete record keeping; inconsistent handling of vulnerable customers; inadequate reviewing of arrangements; inaccurate communications; and lack of consideration of other options.

The FCA emphasised that it expected firms to review their practices in line with FCA published rules, guidance and examples of good and poor practice. It also confirmed that: "We will continue to monitor and review firms' practices through ongoing supervisory activity and we will be prepared to take action against firms where we find evidence of poor practice."[47]

3.3 Lenders' obligations after repossession

When selling a property that has been repossessed, the mortgage lender is obliged by the FCA rules to:

- Market the property for sale as soon as possible.
- Obtain the best price that might reasonably be paid, taking account of factors such as market conditions, as well as the continuing increase in the amount owed by the customer.[48]

If the sale results in a shortfall the FCA Mortgages and Home Finance: Conduct of Business Sourcebook sets out what the lender must do where the loan is FCA regulated.[49] The Council of Mortgage Lenders summarised the requirements as follows:

---

45 FCA, TR14/3 - Thematic Review - Mortgage lenders' arrears management and forbearance, last updated 12 October 2016

46 FCA, TR18/5 – Thematic Review - Management of long-term mortgage arrears and forbearance, 6 December 2018

47 Ibid.

48 Financial Conduct Authority, MCOB Mortgages and Home Finance, section 13.6 Repossessions, para. 13.6.1

49 Financial Conduct Authority, , MCOB Mortgages and Home Finance, section 13.6 Repossessions, paras 13.6.3-13.6.5

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

If there is a shortfall, your lender will contact you as soon as possible after the sale of the property telling you that there is a shortfall debt. They will also let you know that the shortfall debt may be pursued by another company.

If interest is being charged on the shortfall debt, your lender will send you regular, written financial statements which will update you on how much you owe. It is important that you keep your lender informed of your new address after you leave the property so that you receive these statements.

The action that your lender takes will depend on the circumstances. A lender may or may not wish to seek repayment of the shortfall debt, but if they do they must notify you within six years.[50]

3.4 Assisted Voluntary Sales (AVS)

Some mortgage lenders offer support to homeowners with mortgage arrears so they can sell their home and avoid repossession. This support package may be called 'Assisted Voluntary Sale' (AVS) or 'Voluntary Sale'. The range of support on offer from the lender might include:

- Allowing time to sell (this varies, with lenders offering anything from three, six, nine or up to twelve months)
- Agreeing to concessionary (reduced) mortgage payments and a halt to any repossession action while you are actively trying to sell the property
- Reimbursing or covering solicitor and/or estate agent fees
- Enabling the services of an asset manager to act as a 'proxy vendor', helping to progress the sale
- Providing a deposit and rent in advance, to secure alternative private rented housing.[51]

The National Homelessness Advice Service (NHAS) has published a factsheet, How to exit homeownership through a voluntary or assisted voluntary sale (AVS) (April 2018), which is intended to help homeowners consider their options if they feel they are unable to remain as a homeowner or the home they own is unaffordable.

The NHAS factsheet highlights some of the potential benefits AVS may offer a homeowner over a repossession:

- Less stress as a result of avoiding repossession and the sudden loss of the home and lower shortfall debts.
- Less disruption to work or the children’s schooling, since the move will be planned.
- Increased likelihood of a positive outcome where an application for social housing is made to the local authority.
- You may achieve a better sale price for your home.

---

50 Council of Mortgage Lenders website, What happens if repossession occurs? [Last accessed 20 June 2017 – no longer available online]

51 National Homelessness Advice Service, How to exit homeownership through a voluntary or assisted voluntary sale (AVS), April 2018

However, everyone's circumstances are different, and individuals should always seek independent professional advice on their specific circumstances.

3.5 Financial assistance: Support for Mortgage Interest (SMI)

The prime objective of the Support for Mortgage Interest (SMI) scheme is to provide short-term assistance for owner-occupiers who have a liability to make mortgage payments and who are unable to do so to prevent loss of their home through repossession. The scheme provides financial assistance towards owner-occupier costs (principally mortgage interest payments) for claimants of certain means-tested benefits.

Under the last Labour and Coalition Governments, SMI provided support in the form of a welfare benefit. Payments were generally made direct to lenders. For most claimants, payments were subject to a certain 'waiting period' and a cap on the size of mortgage on which eligibility for assistance is calculated.

Following the 2015 General Election, the Conservative Government included three announcements regarding the SMI scheme in its Summer Budget:

- from April 2016 the "waiting period" for SMI would increase from 13 weeks to 39 weeks - this came into force for new working age claimant applications from 1 April 2016;[52]
- the cap on the size of mortgage on which interest payments can be met would remain at £200,000; and
- from April 2018 SMI would change from a welfare benefit to an interest-bearing loan, secured against the mortgaged property and repayable when ownership of the property is sold or transferred.[53]

Measures to convert SMI from a benefit to a loan were included in the *Welfare Reform and Work Act 2016*, which received Royal Assent on 16 March 2016. Regulations to implement the loan scheme were brought into force for most purposes on 27 July 2017: *Loans for Mortgage Interest Regulations 2017* (SI.No.725/2017).

The rules on eligibility and the amount of assistance available through SMI are available on the GOV.UK website.

The Commons Library briefing paper: Support for Mortgage Interest (SMI) scheme (SN/SP/6618) provides further background information about the scheme.

52 Universal Credit claimants have to wait until they've received 9 consecutive Universal Credit payments.

53 HM Treasury, Summer Budget 2015, 8 July 2015,

3.6 Legal advice

Low income households facing possession proceedings may be entitled to free legal aid. The Government's webpages on Legal Aid (www.gov.uk/legal-aid) explain the eligibility criteria.

The Legal Aid Agency (LAA) funds Housing Possession Court Duty Schemes (HPCDS) throughout England and Wales. The schemes allow anyone in danger of repossession to get free emergency legal advice and representation on the day of their hearing, regardless of financial circumstances.

3.7 Local authorities' homelessness duties

Prevention

The Civil Procedure Rules Part 55 require mortgage lenders to notify local housing authorities that possession proceedings relating to a mortgaged property within their area have commenced. These changes came into force on 1 October 2009.

The Department for Communities and Local Government (DCLG) issued non-statutory guidance to local authorities on Lender notification of repossession proceedings to local authorities (September 2009).[54] The guidance encourages local authorities to proactively engage with households before repossession takes place in order to prevent homelessness.

The *Homelessness Reduction Act 2017* came into force on 3 April 2018. The Act places duties on local authorities in England to intervene at earlier stages to prevent and relieve homelessness in their areas. It also requires authorities to provide homelessness services to all those affected, not just those who have 'priority need'.

Repossession and intentional homelessness

In implementing their duties toward homeless households under Part 7 of the *1996 Housing Act* (as amended) local authorities are obliged to have regard to the Homelessness Code of Guidance for Local Authorities. The Code provides the following guidance on applying the statutory criteria to determine whether an applicant is intentionally or unintentionally homeless:

> An applicant's actions would not amount to intentional homelessness where they have lost their home, or were obliged to sell it, because of rent or mortgage arrears resulting from significant financial difficulties, and the applicant was genuinely unable to keep up the rent or mortgage payments even after claiming benefits, and no further financial help was available.
>
> ...in cases which involve mortgagors, housing authorities will need to look at the reasons for mortgage arrears together with the applicant's ability to pay the mortgage commitment when it was taken on, given the applicant's financial circumstances at the time.[55]

---

54 DCLG, Lender notification of repossession proceedings to local authorities, 29 September 2009

55 MHCLG, Homelessness Code of Guidance for Local Authorities, paras 9.18-19

4. Historic schemes to support homeowners

Additional temporary, measures were introduced as a direct response to the 2008 financial crisis which were intended to support homeowners struggling with their mortgage payments and minimise the number of repossessions. These measures are outlined below.

Preventing Repossessions Fund

In May 2009 the Labour Government announced the Preventing Repossessions Fund. This was extra funding available to local authorities from June 2009 "to enable them to offer small loans to households that are now at risk because of the recession". The announcement continued:

> Financial assistance through small loans (where possible) allows money to be recycled to help other households in the local authority area in the future. However, final decisions on the efficient and fair deployment of this extra funding rest with local authorities. These should be based on individual local need and circumstances.[56]

The loans ranged from £1,000 to £3,000 per household and were capped at £5,000. They were administered by local authorities. The following response to a Parliamentary Question set out how the funding was allocated:

> **John Healey:** Allocations have been made to local authorities from the Preventing Repossessions Fund based on population and levels of repossession activity. A list of allocations to individual authorities has been placed in the House Library.
>
> The fund enables local authorities to extend small interest-free loans of up to £5,000 to families at risk of homelessness through repossession or eviction. Detailed terms are set at local level.
>
> In the current economic conditions, we have acted rapidly to put in place help and support for households struggling with their mortgage at every stage: from free debt advice when problems start, to free support for cases that reach court. Advice is available to all households struggling with their mortgage, with targeted schemes for those in most need.[57]

On 9 February 2012 the Coalition Government announced an allocation of £20m for local authorities for a new Preventing Repossessions Fund.[58]

Mortgage Rescue Schemes

During the financial crisis in the early 1990s, the then Conservative Government implemented several measures to alleviate pressure on mortgagors with arrears, one of which involved large lenders committing to establish mortgage-to-rent schemes with the assistance of housing associations. The importance of the schemes was soon

56 DCLG, Preventing Repossession Fund, May 2009
57 HC Deb 26 June 2009 c1198W
58 DCLG, [£20m for safety net against repossessions](), 9 February 2012

downplayed in practice, one press report estimates the number of borrowers 'rescued' in this way to be as low as 50.[59] Such schemes are complex to devise and implement, and homeowners often have limited enthusiasm for them, preferring to pursue options that will keep them in ownership of their home.

Prior to the 'credit crunch' some local authorities were operating not-for-profit 'mortgage rescue schemes' in partnership with local housing associations, although there were very few in existence. They can have strict rules about who can apply. Typically, these schemes involve a housing association purchasing the house – or a portion of it – and then leasing it back to the original owner, who can continue to live there as a tenant. Sometimes it may be possible for the previous owner to buy back the house when their financial circumstances allow.

On 2 September 2008, the Labour Government announced a £2 billion package for housing which included an enhanced Mortgage Rescue Scheme, costing £200 million, which aimed to assist up to 6,000 households over the following two years. The Government estimated that the enhanced scheme, by preventing this number of households from being repossessed, would have a monetised benefit of £390 million.[60] The announcement, which described the scheme as "a limited scheme which cannot help those who have borrowed excessively or acted recklessly", said:

> Depending on their specific circumstances, eligible homeowners will be offered one of three products, following an assessment of their case by their local authority:
>
> - shared equity would help householders who have experienced payment shocks and need some help in paying their mortgage
> - shared ownership would help those with a bigger financial gap but still able to make a contribution to monthly payments
> - sale and rent back will help the most vulnerable on low incomes with little chance of sustaining a mortgage.

The statement continued:

> Our mortgage rescue scheme will help the most vulnerable households. A number of private sector organisations have proposed different schemes to help those facing difficulties. Over the autumn we will be working with the CML and private providers. We will be challenging them to develop privately-funded proposals so that mortgage rescue may be an option for other families in difficulty, perhaps because of payment shocks stemming from the end of fixed-rate terms.[61]

On 22 October 2008, Iain Wright confirmed that this scheme would be fully operational from January 2009. On 24 November 2008 it was further announced that more than 60 local authorities would be fast-tracking the scheme by taking applications from the beginning of December 2008 and also that the scheme would be enhanced to cover

[59] 'More homes at risk as mortgage rescue fails', *Guardian*, 30 July 1992
[60] DCLG, Homeowners Support Package: Impact Assessments, September 2008, p19
[61] DCLG, Billion pound package for housing, 2 September 2008

vulnerable families at risk of repossession because of additional loans secured on their home.[62]

The Department of Communities and Local Government (DCLG) produced a booklet about the Mortgage Rescue Scheme: About the mortgage rescue scheme: Government mortgage to rent (now archived). In the 2009 Budget the Government announced that it would be "widening the eligibility criteria for the Mortgage Rescue Scheme so that households in negative equity are not excluded";[63] subsequently a response to a Parliamentary Question confirmed that this would be the case "provided that their loan to value ratio is less than 120 per cent."[64] This was only relevant to the Mortgage to Rent rescue scheme.

An evaluation of the Mortgage Rescue Scheme (MRS) and Homeowner Mortgage Support Scheme (see below) was commissioned by DCLG in 2009. The researchers published an interim report on 23 July 2010.[65] They reported strong support for the MRS but made some recommendations in terms of value for money:

> There was wide support from both partners and borrowers for the Mortgage Rescue Scheme (MRS). It provides relief and security for borrowers facing homelessness and has aided market confidence. Between January 2009 and March 2010, 629 borrowers accepted an offer through the scheme. Over 20,000 households with mortgage difficulties have received free advice and assistance from their local authority. There was a widespread aspiration from partners for MRS to become a permanent feature of homeless prevention.[66]

The Housing Minister, then Grant Shapps, confirmed that the MRS would remain in place but would be refocused to deliver improved value for money with a reduction in the grant rate paid to housing associations and tighter caps on property price and repair costs.[67] In October 2010 DCLG allocated a further £221 million to continue the scheme until spring 2013 – the scheme was subsequently extended and closed to new applicants on 31 March 2014 (see below for information on early closure of the scheme in London).

Figures published on 10 February 2011 showed that the MRS helped 4,247 households receive help and advice from their local authority in the previous quarter, with 2,015 homeowners having completed the full process since the scheme's launch in January 2009.[68] The final

---

62 DCLG, Real help now to support homeowners through difficult times, 24 November 2008
63 HM Treasury, Budget 2009: Building Britain's Future, p104
64 HC Deb 27 April 2009 c1120W
65 DCLG, Evaluation of the Mortgage Rescue Scheme and Homeowners Mortgage Support: Interim report, The Centre for Housing Policy, University of York and School of the Built Environment, Heriot Watt University, July 2010
66 Ibid.
67 DCLG Press Release, Grant Shapps outlines Government support for struggling homeowners, 20 July 2010
68 DCLG, No room for complacency despite fall in home possessions, 10 February 2011

mortgage rescue monitoring statistics provided by DCLG were published in May 2011.[69]

The National Audit Office (NAO) published an evaluation of the MRS on 25 May 2011. The NAO criticised the scheme, arguing that in the early stages it did not provide value for money. The report acknowledged that many of the defects were subsequently addressed.[70]

The Greater London Authority (GLA) took over responsibility for the MRS in London in April 2012. The GLA had intended to end new applications to the scheme on 31 December 2013 but wrote to all London authorities advising that the scheme would be closed to new applicants with immediate effect in October 2013. The GLA reportedly cited the expense of the scheme and low take-up as reasons for its early closure.[71]

Director General of the Council of Mortgage Lenders (CML), Paul Smee, commented on the imminent closure of the MRS in November 2013:

> As the Government's mortgage rescue scheme in the English regions closes to applications at the end of March next year, we will be sorry to see it go. While the 5,000 households helped directly through mortgage rescue may seem relatively small, the benefit to those households was huge. And the scheme played a vital role in encouraging borrowers to talk to their lender, and seek free independent debt advice. Lenders remain fully committed to helping their borrowers as far as realistically possible to manage arrears if they do arise, and get back on track.[72]

The Homeowner Mortgage Support scheme

During the debate on the Queen's Speech on 3 December 2008, the Prime Minister announced that a new scheme would be launched to assist people who were suffering a temporary but significant loss of income which left them unable to pay their mortgage for a short period, such as being made redundant. Under the Homeowner Mortgage Support (HMS) scheme, those eligible could defer a portion of the monthly interest payments on their mortgage for up to two years. Lenders offering HMS had the security of a Government guarantee in the event of borrower default.

A press notice from HM Treasury on 10 December 2008 set out who qualified for this assistance:

> To qualify, borrowers will:
>
> - have suffered a loss of income from employment or self-employment of a scale which now makes full mortgage payments difficult, but which is not expected to be a permanent loss of income;

---

69 DCLG, Mortgage Rescue Scheme monitoring statistics – March Quarter 2011, 12 May 2011

70 HC 1030, Session 2010-2012, May 2011

71 'London councils scrap mortgage rescue scheme ahead of schedule', *Guardian*, 23 November 2013

72 CML, Market Commentary, December 2013

- have been in dialogue with their lender, including over the use of existing forbearance policies, and have been making some level of regular payment;
- have taken out a mortgage of up to £400k;
- have savings below £16,000, (which is the same as for the existing Support for Mortgage Interest scheme (SMI));
- apply for assistance as owner-occupier - the programme will not apply to people with second homes or buy-to-let properties;
- not be in receipt of SMI or mortgage rescue assistance;
- have been assessed as being able to pay a certain monthly amount on an ongoing basis;
- have received financial advice from a party other than their lender to determine their eligibility for the scheme, including testing the long-term sustainability of their financial position, and their ability to resume full payments once their income increases; and
- have fallen into arrears for a number of months during which the lender has exercised forbearance.

The scheme was to be open for a window of two years, subject to review.[73]

On 21 April 2009 the scheme was formally announced in a statement to Parliament.[74]

Full details of the scheme can be found in a (now archived) DCLG leaflet, Guide to Homeowners Mortgage Support. It was reported after April 2009 that the larger banks taking up the scheme were those owned or controlled by the state, and that those outside of Government control had not taken part.[75]

In September-October 2009, the Citizens' Advice Bureau's *Adviser* magazine published an article discussing some of the advantages and disadvantages of the HMS scheme. The acknowledged advantages included protection from repossession for as long as HMS payments were maintained, giving an opportunity for homeowners to stabilise their finances. The disadvantages centred on the situation homeowners would be in on leaving the scheme: they would owe more money than when they entered it, and, if they left the scheme and it became apparent within four years that they could not sustain their mortgage or loan payments, the home could be repossessed.[76]

As noted above, interim findings of an evaluation of the Mortgage Rescue Scheme and the HMS scheme were published on 23 July 2010.[77]

73 HM Treasury, The Homeowner Mortgage Support Scheme, 10 December 2008
74 HC Deb 21 April 2009 5WS
75 'Mortgage support scheme shunned', *Financial Times*, 22 April 2009; 'More than 500,000 homeowners not covered by HMSS scheme', *Roof Magazine*, 22 April 2009
76 'Mortgage Rescue and Homeowner Mortgage Support', *Adviser*, September-October 2009
77 DCLG, Evaluation of the Mortgage Rescue Scheme and Homeowners Mortgage Support: Interim report, The Centre for Housing Policy, University of York and School of the Built Environment, Heriot Watt University, July 2010

The researchers found less support for HMS than the Mortgage Rescue Scheme:

> Support for Homeowners Mortgage Support (HMS) remains muted amongst lenders and advisors as it is seen as administratively burdensome, narrow in its applicability and potentially debt-inducing. Some lenders offer comparable forbearance schemes, which can be more advantageous to borrowers and more widely available. Between April 2009 and March 2010, 32 borrowers were entered on to HMS arrangements by their lender, compared to over 30,000 borrowers who were entered on to lenders' own concessionary forbearance arrangements.
>
> However, most partners consider HMS, alongside other Government measures, to have significantly influenced the extent of lenders' own forbearance policies. Thus HMS has indirectly benefited many more borrowers than have been entered on the scheme. Partners wish to retain HMS until the threats to arrears and possessions from rising interest rates and unemployment have abated, although support for the scheme's long term continuation is weak.[78]

On 20 July 2010 the Minister for Housing, then Grant Shapps, announced that the HMS scheme would remain in place "as a backstop scheme that may be needed if interest rates rise." The scheme closed at the end of the 2010/11 financial year.[79]

Support for Mortgage Interest (SMI)

In the wake of the 2008 financial crisis the Labour Government made several changes to the Support for Mortgage Interest (SMI) scheme to strengthen support for those affected by the economic downturn:

- The 'waiting period' for SMI was reduced from 39 to 13 weeks for new working age claimants;
- the mortgage cap on which eligibility for SMI assistance was calculated was increased from £100,000 to £200,000; and
- the "standard rate" of interest for SMI support was frozen at 6.08%.[80]

The changes were intended to be temporary, but remained in place, with the exception of the rate freeze, throughout the Labour and Coalition Governments.

The Commons Library briefing paper: Support for Mortgage Interest (SMI) scheme (SN/SP/6618) provides further background information on the scheme.

In addition to improving the financial safety-net available to householders in receipt of certain benefits, the Labour Government strengthened the debt and legal advice available to mortgagors.[81]

---

78 Ibid.
79 DCLG, Grant Shapps outlines Government support for struggling homeowners, 20 July 2010
80 DCLG, Real help now to support homeowners through difficult times, 24 November 2008
81 Ibid.

5. The impact of Government policy on repossession levels

5.1 Evaluation

There is a view that lessons learned during the recession of the early 1990s were successfully applied during the 2008 financial crisis and that lender forbearance was crucial; there was little point in lenders pursuing repossessions and releasing additional properties into an already depressed housing market.

The Mortgage Rescue Scheme (MRS, see section 4 above) received early criticism that it was falling short of the Labour Government's target for helping people stave off repossession. The number of households accepting an offer made through the scheme from January to September 2009 was 92, of which 74 were accepted in the April-June period. In response to the slow start to the scheme the Housing Minister, then Margaret Beckett, defended it, saying she expected more households to be helped in the coming months and that the scheme was part of a broader package of measures to help homeowners.

Shelter argued for the scheme's simplification and for an extension of funding.[82] An *Inside Housing* article in August 2009 reported that the number of housing associations involved with the scheme meant that its capacity was limited; it also suggested that the majority of applicants could not afford the shared equity option, potentially making the scheme more expensive than anticipated.[83]

The problems experienced in the early stages were confirmed in the National Audit Office report of May 2011. However, as noted earlier, this report acknowledged that many of the defects of the scheme were subsequently addressed.[84]

In total, the scheme directly assisted around 5,000 households to remain in their homes and avoid repossession. The additional value of the scheme seems to have been in encouraging homeowners to seek assistance.

On 9 December 2009 John Healey (then Housing Minister) revealed that only 15 homeowners had made use of the formal Homeowners Mortgage Support (HMS) scheme, however, many more households had negotiated flexible repayment packages with their lenders. According to lenders and money advice agencies, both the MRS and HMS scheme were key in encouraging homeowners to seek early help, enabling them to reach agreements with their lenders and to stay in their homes:

> Mr Healey also published new figures that show lenders are going that extra mile to ensure repossession is always a last resort and that thanks to backstop schemes supported by Government or put in place by lenders themselves thousands of families are

82 See 'Slow take-off for government's mortgage rescue scheme', *Guardian*, 29 May 2009 and 'Slow start for mortgage help plan', *BBC News Online*, 29 May 2009
83 'Mortgage rescue flounders', *Inside Housing*, 21 August 2009
84 NAO, The Mortgage Rescue Scheme HC 1030, Session 2010-2012, May 2011

> receiving crucial help to make their monthly mortgage payment affordable until their income recovers.
>
> 135,000 families now have formal repayment agreements on a flexible basis, 74 per cent more than a year ago. Today's figures show that 6,000 of these are on terms equivalent to the Homeowners Mortgage Support (HMS) scheme standard and only 15 have so far needed the formal backstop of the HMS scheme.
>
> The Pre Budget Report also confirmed that thanks to the Government's comprehensive package of support for people struggling with their mortgages over 330,000 families have been helped so far during the recession. This includes tighter rules so repossession is always a last resort, tougher tests for lenders in court so they must prove they have exhausted every possible option before taking repossession action, £130m for debt and advice services and the targeted schemes such as Mortgage Rescue and HMS.[85]

The evaluation of the MRS and HMS scheme published in July 2010 also referred to the small numbers assisted by HMS, but there was agreement that these schemes had significantly influenced lenders' own forbearance schemes. The interim report concluded that there was a case for continuing both schemes until the housing market recovered. The HMS scheme closed at the end of March 2011 and the MRS closed at the end of March 2014 (it had already closed to new applications in London).

Additional research commissioned by the National Housing and Planning Advice Unit, Modelling and forecasting UK mortgage arrears and possessions (NHPAU): Summary was published on 20 July 2010. This research concluded:

> **Lenders' forbearance policies and more generous income support to those in difficulties with their mortgage appear to have had a notable effect in lowering possessions**. It follows that changes to these policies would cause a significant increase in possessions.[86]

DWP research published in May 2011, An evaluation of the January 2009 and October 2010 arrangements to support for mortgage interest, confirmed the important role played by the extension of the social security safety net in preventing repossessions but also noted "lenders are increasingly showing signs of reconsidering their approach to forbearance as arrears mount." The reduction in the Standard Interest Rate (SIR) with effect from 1 October 2010 was highlighted as an issue, as was the decision to limit to two years the period in which JSA claimants could benefit from Support for Mortgage Interest.[87]

In 2010 the Labour Government said that over 330,000 households had received help and advice with their mortgages, with many using the dedicated mortgage help website launched in September 2009:

[85] DCLG, Action by government and lenders keeping families in their homes, 9 December 2009

[86] DCLG, Modelling and forecasting UK mortgage arrears and possessions: summary, Professor John Muellbauer and Dr. Janine Aron, 20 July 2010, Findings, p1

[87] This only affected new claimants after 5 January 2009.

> Nearly 88,000 people have gone to www.direct.gov.uk/mortgagehelp (external link) since its launch in September, over 26,000 of whom have used it to develop personal action plans tailored to their individual circumstances. This help has also proved valuable for those feeling the pinch after Christmas - over 17,000 people have visited the website since 1 January.[88]

Research undertaken by the Chartered Institute of Housing's consultancy arm, ConsultCIH, published in October 2009, looked at hundreds of repossession orders made in 2008.[89] The research found that many households were in denial about losing their homes. Conversely, others believed the loss of their home to be a foregone conclusion by the time their case reached court. Consequently, only half of households facing repossession attended their court hearings. The research also found that the letter of the pre-action protocol was being followed more than the spirit, and that judges were not being sufficiently proactive in seeking clarity and depth in the actions undertaken by lenders. The Director of ConsultCIH expressed support for the extension of quality housing advice services:

> In general housing advice services need to become more widely available to help people make the right decision for them in the first place – not just when things go wrong. We also need to start planning now for when the housing market picks up and interest rates start to rise. This is when homeownership will again become unaffordable for many marginal homeowners and it is presumptuous to assume that the need for good housing advice is only a temporary measure.[90]

Joint research by AdviceUK, Citizens Advice and Shelter (published in December 2009) also found that a significant number of lenders were failing to comply with the pre-action protocol, particularly sub-prime lenders.[91]

5.2 Review of mortgage law & the "Horsham loophole"

The Ministry of Justice (MoJ) issued a consultation paper on 29 December 2009, *Mortgages: power of sale and residential property,*[92] in which it sought views on proposals "to amend the law in relation to residential owner-occupier mortgages to ensure that such properties cannot be sold without either a court order or the homeowner's consent." These proposals were drafted in response to a specific 2008 High Court decision in the case of *Horsham Properties Limited v Clark and Beech,*[93] the brief facts of this case, which attracted a good deal of media attention, and the Labour Government's response, are explained below:

---

88 DCLG, John Healey extends Government help to tackle repossessions, 25 January 2010
89 ConsultCIH, Analysis of Housing Repossessions in the South West, 2009
90 CIH Press Notice, 16 December 2009
91 AdviceUK, Citizens Advice and Shelter, Turning the Tide?, December 2009
92 MoJ, Consultation Paper CP55/09
93 [2008] EWHC 2327 (Ch)

> The case revolved around the mortgage lender's use of particular contractual and legal remedies when the borrower was in arrears on mortgage payments. Of particular media interest was the lender's use of its power of sale, whereby the property was sold to a third party to pay off the mortgage debt. According to the property law of England and Wales, and to the terms of the mortgage contract in question, the lender was able to do this without seeking a court order of any kind, and did not seek to obtain physical possession of the property before it was conveyed to the buyer.
>
> *Horsham* did not change the law in this area. In addition, the mortgage in question in *Horsham* was a buy to let mortgage, under the terms of which the borrowers were not permitted to live in the property themselves. Further, the borrowers continued to live in the property for a substantial period of time without making payments. This was not a case of a mortgage taken out for the purpose of funding an owner-occupied family home.
>
> However, in the light of the concerns expressed about the case in Parliament and the press, the Justice Secretary ordered an inter-departmental review by officials of the protections afforded to borrowers in arrears when lenders are pursuing recovery of the debt, including the exercise of the power of sale. The review concluded that the outcome of the *Horsham* case did not pose a threat to homeowners. It recommended that no immediate legislation was necessary in relation to the powers of lenders, but legislation to prevent a potential future occurrence of problems could be beneficial.
>
> Following consideration of these findings, the Government decided that a consultation should be held on proposals to restrict the exercise of the power of sale in residential owner-occupier cases. The intention was to close what had become known as the 'Horsham loophole'. This decision was announced in the Consumer White Paper published in July 2009, which stated that "[w]e also intend to consult shortly on proposals to amend the law to ensure that owner occupied homes cannot be sold by lenders without taking court proceedings." [94]

The consultation period closed on 28 March 2010. At the time of writing there have been no further developments.

---

[94] MoJ, Consultation Paper CP55/09

6. Private sector mortgage rescue schemes: 'sale and rent back'

The private sector also developed its own mortgage rescue response in the form of "sale and rent back" (SRB) schemes. These schemes involve private companies buying people's houses at discounted prices and keeping the ex-owners in situ as tenants. Although these schemes provide individuals with a quick and easy source of cash, they were not regulated until 2010 and could leave ex-owners facing substantial rent charges or, ultimately, eviction, as assured shorthold tenants have no long-term security of tenure.

In May 2008 the Office of Fair Trading (OFT) launched an inquiry into the SRB sector, prioritising the matter due to the economic conditions at that time.[95] The final OFT report, published on 15 October 2008, raised concerns about the manner in which the sector was managed and recommended its regulation to better protect customers, including an obligation on SRB firms to be more transparent about the terms and cost of the deal, and a requirement that homeowners are informed of the free and independent advice available to them.[96] On 22 October 2008 the Chief Secretary to the Treasury announced that the Government would accept the OFT recommendations in full.[97]

On 6 February 2009 the Treasury launched a consultation on strengthening protection for vulnerable homeowners, which closed on 1 May 2009.[98] On 2 June 2009 the Government laid secondary legislation before Parliament to bring SRB agreements within the scope of what was then the Financial Services Authority (FSA) regulation. An interim regulatory regime came into force on 1 July 2009; the full regulatory regime took effect from 30 June 2010. The key features of the regulatory framework for customers in the SRB market include:

- banned exploitative advertising and high-pressure sales techniques and prohibited the use of emotive terms like 'fast sale', 'mortgage rescue' and 'cash quickly' in promotional literature;
- a 14 day cooling-off period to give consumers more time to make decisions on sale and rent back;
- banned cold calling and prohibited firms from dropping promotional leaflets through letter boxes;
- rules to ensure consumers have a security of tenure for a minimum of five years;
- an affordability and appropriateness check across all sales to check that the sale and rent back deal is right for the consumer; and

95 'OFT launches market study into sale and rent back', Office of Fair Trading Press Release, 14 May 2008
96 Office of Fair Trading, Sale and Rent back: an OFT market study, 15 October 2008
97 HC Deb 22 October 2008, Col 10WS
98 HM Treasury, Regulating the sale and rent bank market: a consultation, February 2009

- measures to ensure all risks are clearly signposted to the customer, via FSA literature and during the sales process.[99]

In March 2011, the FSA undertook a thematic review of the SRB market.[100] 22 authorised SRB firms were reviewed. The FSA identified widespread poor practice among SRB firms:

> …The main conclusion is that the majority of SRB sales were either unaffordable or inappropriate. This means consumers have entered into agreements that have either already led to a detrimental outcome, or are highly likely to in the future. This is unacceptable, and we are taking immediate action to address this.[101]

As a result of the review, five SRB firms ceased to conduct SRB business; a number of firms agreed to complete past business reviews; and one firm was referred to the FSA enforcement division. According to the FSA, "due to the prominence of these firms in the sector, the market for regulated SRB has in effect been temporarily halted".[102]

As the FSA started to regulate SRB transactions, it became apparent that many transactions (estimated to be around 80%) were taking place outside of FSA regulation. This was because firms were using the 'by way of business' test to circumvent regulations.[103] As a result, in 2011 the Government made a technical amendment[104] to the test to make it clear that firms in the SRB market are acting 'by way of business' and are therefore carrying on a regulated activity, unless they are closely related to the homeowner selling the property.

The *Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) (Amendment) Order 2014* required the Government to conduct a statutory review of the amendment in 2017 and includes a "sunset" provision for the amendment to cease to have effect on 1 January 2022.

In April 2013, the Financial Conduct Authority (FCA) took over responsibility for the regulation of SRB transactions from the FSA.

The Money Advice Service has published independent information on sale and rent back schemes.

The Commons Library briefing paper: The regulation of sale and rent back agreements (SN/BT/5354) provides further background information.

---

99 FSA/PN/016/2010, FSA introduces further protections for sale and rent back customers, 29 January 2010
100 Financial Services Authority, Sale and Rent Back Review 2011, July 2012
101 Ibid., para 1.3
102 Ibid., para 1.7
103 HM Treasury, Impact Assessment: Renewing the sale and rent back 'by way of business' amendment, 18 July 2014, p4
104 The Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) (Amendment) Order 2011 (S.I. 2011/2304)

BRIEFING PAPER
Number 04769
12 February 2021