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By Hannah Cromarty
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Mortgage arrears and repossessions in England

Summary

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Summary

Around 7.1 million households in England own their home with a mortgage (30% of all households), according to the English Housing Survey 2021 to 2022.

If a homeowner fails to keep up their mortgage payments, the mortgage lender may seek possession of the property through the courts to sell it and repay the loan. Mortgage lenders are required to follow certain steps to ensure repossession is used as a matter of last resort.

Cost of living: Mortgage support measures

The Bank of England interest rate rose from 0.1% in December 2021 to 5.25% in August 2023.

The bank estimates that by July 2023, around half of mortgagor households had increases in their repayments since late 2021. Higher rates are expected to affect most of the remainder of households by the end of 2026.

Responding to concerns about the financial impact of rising interest rates on those with mortgages, the Government, the Financial Conduct Authority (FCA) and mortgage lenders agreed a Mortgage Charter in August 2023. Signed by lenders representing approximately 90% of the mortgage market, the charter commits to additional measures to assist homeowners in managing their mortgage repayments and avoiding repossessions. For example:

- Customers who are up-to-date with payments can switch to a new mortgage deal with their lender at the end of their existing fixed-rate agreement without a new affordability check.
- Customers wanting to change the terms of their mortgage – for example, by switching to interest-only payments or extending their mortgage term – have the option to revert to their original mortgage deal within six months without affecting their credit score.
- Where a mortgage lender is seeking to repossess a home, there will be a minimum 12-month period from the first missed payment before there is a repossession without consent.

The Shadow Chancellor of the Exchequer, Rachel Reeves, has urged the Government to make the mortgage support measures mandatory for all lenders.

The Liberal Democrats have called for a temporary £3 billion mortgage protection fund to provide grants of up to £300 a month to homeowners struggling to pay their mortgage. The Chancellor of the Exchequer, Jeremy Hunt, has ruled out providing additional financial support for mortgage holders on the basis that this would add to inflationary pressures.

In addition to the new Mortgage Charter, the Government has:

- reformed the Support for Mortgage Interest scheme (see more below) to allow Universal Credit claimants to access support while working and to shorten the qualifying period households must get Universal Credit for before they can receive support

- provided £91.4 million funding in 2022/23 for the Money and Pensions Service to provide debt advice in England

The Financial Conduct Authority published guidance for firms supporting existing mortgage borrowers impacted by rising living costs on 10 March 2023.

UK Finance, the representative body for the banking and finance industry, has launched a national 'Reach Out' campaign to raise awareness of the support available to mortgage customers.

Mortgage arrears and repossessions

UK Finance reported there were around 90,700 mortgages in arrears of more than 2.5% at the end of June 2023. Around 1,100 properties were taken into possession in the quarter ending June 2023.

Mortgage arrears and repossessions are well below levels seen following the financial crisis in 2008. At the end of 2009, 216,400 mortgages were in arrears by more than 2.5% of their outstanding balance and 48,900 properties were repossessed over the course of the year.

Arrears and repossessions declined over the following years. This has been in the context of 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.

During the Covid-19 pandemic there was a slight increase in the number of households in arrears. Repossessions remained low due to various measures including an industry-wide moratorium on repossessions between March 2020 and April 2021. Mortgage arrears and repossessions have subsequently risen.

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 scheme provides financial assistance in the form of an interest-bearing loan for claimants of certain means-tested benefits. Commentators have called on the Government to strengthen the financial support available through the scheme.

Low-income households facing possession proceedings may be entitled to free legal aid. From 1 August 2023, the Legal Aid Agency has introduced a new Housing Loss Prevention Advice Service. Individuals who require this service do not need to meet legal aid financial eligibility rules, but they must be at risk of losing of their home.

Historic schemes to support homeowners

This briefing also outlines the temporary mortgage support measures that were put in place during the coronavirus pandemic, and those introduced as a direct response to the 2008 financial crisis.

1 Cost of living: Mortgage support measures

Around 7.1 million households in England own their home with a mortgage (30% of all households).[1]

If a homeowner fails to keep up their mortgage payments and falls into arrears, mortgage lenders are required to follow certain steps before seeking possession of the property through the courts to sell it and repay the loan.

Responding to concerns about the financial impact of rising interest rates, alongside other cost of living pressures, the Government, the Financial Conduct Authority (FCA)[2] and mortgage lenders have introduced additional measures to assist mortgagors to manage their repayments and avoid repossession. This follows temporary mortgage support measures which were put in place to assist homeowners during the coronavirus pandemic (see section 4).

1.1 How rising interest rates have affected mortgages

The Bank of England interest rate (the 'Bank Rate') rose from 0.1% in December 2021 to 5.25% in August 2023.[3] In general, interest rate rises increase the cost of borrowing, although increases do not feed through immediately to all mortgage holders. The impact on individual households depends on the type of mortgage:

- **Tracker mortgages** are linked to an external interest rate, such as the Bank Rate, which can change. Those on a tracker mortgage will already have seen an increase in monthly payments due to interest rate rises.
- **Variable rate mortgages** can rise and fall at any time, as the interest rate is typically set by the lender and isn't directly linked to an external

1 Department for Levelling Up, Housing and Communities (DLUHC), English Housing Survey 2021 to 2022: headline report, Annex Table 1.1, 15 December 2022

2 The Financial Conduct Authority (FCA) regulates the financial services industry in the UK. Its role includes protecting consumers, keeping the industry stable, and promoting healthy competition between financial service providers.

3 Bank of England, Why have interest rates in the UK gone up? (accessed on 20 September 2023)

rate. It's likely that those on a variable rate mortgage will already have seen an increase in monthly payments because of market conditions.

- **Fixed-rate mortgages** will not immediately be affected by interest rate increases. However, if the mortgage holder is close to reaching the end of their deal, or wants to re-mortgage, then the rise in interest rates is likely to impact them.[4] Fixed-rate mortgages currently account for 85% of outstanding mortgages.[5]

The Bank of England estimates that by July 2023, around half of mortgagor households had seen increases in repayments since mortgage rates started to rise in late 2021. Higher rates are expected to affect most of the remainder households by the end of 2026 (around 4 million accounts).[6]

The mortgage costs households face depends on the amount borrowed as well as the interest rate on the mortgage. The Office for National Statistics provides the following examples of how interest rate rises could impact mortgage costs:

> Should the interest rate on a £100,000 mortgage increase from 2% to 6%, assuming a 25-year capital and repayment mortgage, then the monthly mortgage repayment on the same mortgage would increase by £220 (from £424 to £644). However, assuming the same increase on a £300,000 mortgage, monthly repayments would rise by £661 (from £1,272 to £1,933).[7]

In December 2022, the Bank of England estimated the average fixed-rate mortgagor household renewing in 2023 would face a £3,000 a year increase in interest costs, with monthly mortgage payments rising from £750 to £1,000. An analysis by the Resolution Foundation (June 2023) similarly predicts that those renewing their mortgage in 2024 will pay £2,900 a year more on average.[8]

1.2 The Mortgage Charter

The Government has responded to concerns about the impact of rising mortgage rates, alongside other cost of living pressures, on household finances.

On 23 June 2023, the Chancellor of the Exchequer, Jeremy Hunt, announced a new 'Mortgage Charter' had been agreed with the UK's principal mortgage lenders and the Financial Conduct Authority (FCA).[9] The charter, which has been signed by lenders representing approximately 90% of the mortgage

4 FCA, Support available for mortgages as interest rates rise, last updated 21 July 2023
5 Bank of England, Monetary Policy Report - May 2023, p.66, Chart C in Box B
6 Bank of England, Financial Stability Report, July 2023, section 2.1
7 ONS, How increases in housing costs impact households, 9 January 2023
8 The Resolution Foundation, The Mortgage Crunch, S Pittaway, 17 June 2023
9 HM Treasury, Chancellor agrees new support measures for mortgage holders, 23 June 2023

market, sets out additional support for people worried about or struggling with their mortgage payments.[10] Measures include the following:

- Customers' credit scores will not be affected by discussions with their lender. Lenders will offer tailored support for anyone struggling and deploy highly trained staff to help customers.
- Customers who are up-to-date with payments may switch to a new mortgage deal with their lender at the end of their existing fixed-rate agreement without a new affordability check.[11]
- Lenders will provide relevant information in advance of the end of deals to help customers to plan ahead.
- Customers approaching the end of a fixed-rate agreement will be offered the chance to lock in a new deal with the same lender up to six months before it ends. They will still be able to apply for a better like-for-like deal with the same lender, with no penalty, if they find one before their current deal ends.
- Customers wanting to change the terms of their mortgage – for example, by switching to interest-only payments or extending their mortgage term – have the option to revert to their original mortgage deal within six months, without affecting their credit score.
- Where a mortgage lender is seeking to repossess a home, there will be a minimum 12-month period from the first missed payment before the property is repossessed without the owner's consent.[12] [13]

The Chancellor said the measures should "offer comfort to those who are anxious about the impact of higher interest rates on their mortgages, and provide support to those who do get into any extreme financial difficulties."[14]

He ruled out providing broader financial support for mortgage holders, for example though a mortgage relief scheme, on the basis that this would add to inflationary pressures.[15]

In addition to the new Mortgage Charter, the Government has:

- Reformed the Support for Mortgage Interest (SMI) scheme (see section 3.2) from April 2023 to allow Universal Credit claimants to access support while working and to shorten the qualifying period for households in

10 The measures do not apply to Buy-to-Let mortgages.
11 This is provided the terms of the existing mortgage agreement remain unchanged.
12 HM Treasury, Mortgage Charter, last updated 10 August 2023
13 The FCA is amending its Mortgages and Home Finance: Conduct of Business (MCOB) sourcebook for lenders to support the implementation of the Mortgage Charter.
14 HC Deb 26 June 2023, c24
15 BBC, Jeremy Hunt rules out government help on mortgages, 20 June 2023

receipt of Universal Credit before they can receive support from nine to three months.[16]

- Provided £91.4 million funding in 2022/23 for the Money and Pensions Service to provide debt advice in England.[17]

UK Finance, the representative body for the banking and finance industry, has launched a national 'Reach Out' campaign to raise awareness of the support available to mortgage customers. The campaign's key message is to encourage people to reach out to their lender early on if they are worried about making their payments.[18]

1.3 The Financial Conduct Authority's cost of living guidance

In June 2022 the FCA wrote to the chief executives of regulated firms drawing attention to the impacts of the rising cost of living and urging them to take immediate action to support customers:

> Many consumers will feel the impact in their personal finances, but we are particularly concerned that consumers least able to bear the rises will be hardest hit. While the headline average inflation rate is at 9% and rising, the Institute of Fiscal Studies estimates that the poorest households may face average inflation rates as high as 14%. This is in the context of a quarter (27%) of the population having low financial resilience, a figure likely to increase over the coming months.
>
> [...] Firms will also see a wider group of consumers in financial difficulty, who will find it harder to pay their debts. Some of these consumers will be in vulnerable circumstances or may be experiencing financial difficulty for the first time. Firms need to remain alert to the changing situation of their customers and target their efforts in response.[19]

16 See Commons Library research briefing CBP-06618, Support for Mortgage Interest loans for further information about the scheme.

17 PQ 175570 [on Debts: Advisory Services], 17 April 2023

18 UK Finance, Reach Out campaign launch: UK Finance highlights lender support for concerned mortgage holders, 30 July 2023

19 FCA, Dear CEO letter: The rising cost of living – acting now to support consumers, 16 June 2022

In the context of mortgages, forbearance is an agreement between the lender and the borrower to delay initiating repossession proceedings subject to certain conditions, such as agreeing a repayment plan.

With regards to mortgage borrowers, the letter set out FCA's expectation that firms should:

- Provide customers, in particular those who are vulnerable, with an appropriate level of care and support.
- Support borrowers showing signs of financial difficulty or struggling with debt, by making them aware of and helping them access money guidance or free debt advice.
- Give borrowers in financial difficulty appropriate tailored forbearance that is in their interests and takes account of their individual circumstances.
- Ensure that any fees and charges levied on borrowers in financial difficulty are fair and do no more than cover costs.
- Encourage mortgage borrowers to consider switching to a less costly option where that is available.[20]

On 10 March 2023, the FCA published finalised guidance for lenders clarifying the options available to support mortgage customers impacted by interest rate rises and higher living costs.

The guidance sets out the flexibility firms have when providing forbearance to those who need it, and the scope to vary contract terms for borrowers who want to reduce their monthly payments. The guidance seeks to clarify the effect of existing rules and principles, rather than introduce new expectations or requirements.[21]

Potential mortgage support options include:

- a temporary reduction in mortgage payments
- extending a mortgage term to reduce payments
- switching a repayment mortgage to an interest-only mortgage for all or part of its term

When providing support, a firm must act fairly and in accordance with a customer's best interests taking account of their individual circumstances. Firms must also ensure they are clear in their communications about the financial and credit file implications of any forms of support they offer customers.

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20 FCA, Dear CEO letter: The rising cost of living – acting now to support consumers (PDF), 16 June 2022

21 The guidance should be read alongside the Mortgage Conduct of Business Sourcebook (MCOB), the Tailored Support Guidance (TSG), Guidance for firms on the fair treatment of vulnerable customers (VCG), and FCA's June 2022 Dear CEO letter: The rising cost of living (PDF).

The FCA has been working with the industry to help it improve and strengthen arrears management practices.[22]

It has also published information for borrowers on the options and support available if they are struggling with their mortgage payments.

1.4 Commentary on mortgage support measures

The new Mortgage Charter has been generally well received. Martin Lewis, founder of MoneySavingExpert.com, welcomed the new charter:

> I met the Chancellor on Wednesday and reiterated that the minimum we needed was to ensure that when people asked for help from lenders, they knew that if things changed, it wouldn't be detrimental to their financial situation and their credit scores would be protected as much as possible.
>
> I'm pleased to see it looks like the Chancellor has listened and those measures are going to be put in practice by the banks. We need to make sure everybody knows their rights if they are in trouble with their mortgage, so they can feel comfortable speaking with their lender and understand the measures that they can request for help.[23]

Rachel Reeves, the shadow Chancellor of the Exchequer criticised the voluntary nature of the mortgage support measures and said they should be mandatory. She also pointed out that around 10% of lenders had not signed up to the charter.[24]

The Liberal Democrats have called for a temporary £3 billion mortgage protection fund to provide grants of up to £300 a month to homeowners struggling to pay their mortgage. It was suggested this could be funded by reversing cuts to the bank levy and bank surcharge since 2016.[25]

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.[26] The Resolution Foundation has suggested further changes to SMI could include:

- increasing the maximum amount of a mortgage on which interest support can be claimed from the current £200,000

22 For example see: FCA, Borrowers in financial difficulty following the coronavirus pandemic - key findings, 3 November 2022; FCA, TR14/3 - Thematic Review - Mortgage lenders' arrears management and forbearance, 25 February 2014.

23 HM Treasury, Chancellor agrees new support measures for mortgage holders, 23 June 2023

24 HC Deb 26 June 2023 c25

25 The Observer, Lib Dem leader Ed Davey proposes £300-a-month mortgage grants, 6 November 2022

26 See Commons Library research briefing CBP-6618, Support for Mortgage Interest loans

- updating the standard interest rate used to calculate the amount of SMI households get
- further reductions to the qualifying periods
- reversing the 2018 conversion of SMI into a loan scheme

The Resolution Foundation asserts that these changes could provide targeted support for low-income households with relatively little inflationary impact compared to measures providing broader support.[27]

[27] Resolution Foundation, What the Government might actually do to tackle the Mortgage Crunch, 22 June 2023

2 Trends in arrears and repossessions

The number of UK mortgages in arrears has been rising since late 2022, but households in arrears of more than 2.5% of the outstanding mortgage balance still make up less than 1% of all mortgage holders.[28]

There was a moratorium on repossessions between March 2020 and April 2021 due to the Covid-19 pandemic. The number of repossessions has been increasing since the moratorium ended but has not yet reached pre-pandemic levels.

2.1 Extent of arrears in the UK

UK Finance reports that at the end of June 2023 there were approximately 90,680 mortgages in arrears of 2.5% or more of the total outstanding balance. This represents around 0.8% of all mortgages in the UK and is a rise of 12.3% on the number at the end of June 2022. Around 30,560 mortgages were in arrears of more than 10% of the outstanding balance (0.3% of all mortgages). [29]

These figures describe all mortgages, including Buy-to-Let mortgages. Around 81,900 homeowner mortgages[30] were in arrears of 2.5% or more of the outstanding balance, and around 28,690 were in arrears of 10% or more of the outstanding balance.[31]

The chart on the next page shows the quarterly trend in the proportion of mortgages in arrears since 2008. Arrears peaked in the second quarter of 2009, with 1.9% of mortgages in arrears by more than 2.5% of the total balance. Fewer than 1% of mortgages have been in this category since the third quarter of 2015.

Pressures deriving from the Covid-19 pandemic did not have a substantial impact on arrears. UK Finance has attributed this to payment deferrals granted by mortgage lenders (see section 4).[32]

The number of mortgages in arrears by 2.5% or more has been rising since late 2022. This is likely to be due to increased cost pressures associated with

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28 UK Finance, Industry Data Tables AP2 and AP4

29 UK Finance, Arrears and possessions, 10 August 2023

30 Homeowner mortgages are mortgages made to owner-occupiers, as opposed to Buy to Let owners

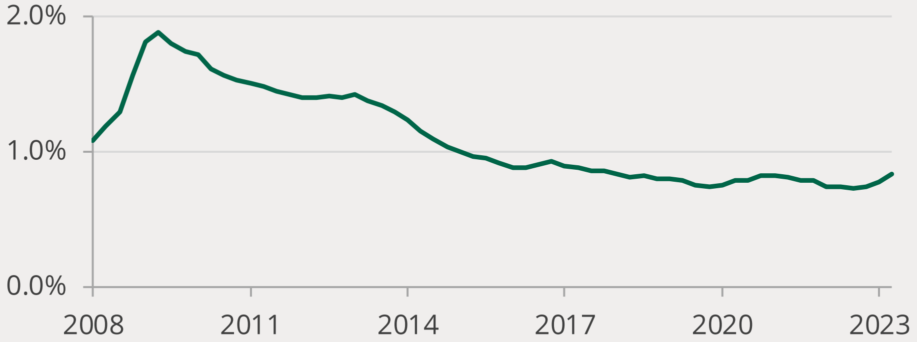
31 UK Finance, Arrears and possessions, 10 August 2023

32 UK Finance, Help remains available for anyone worried about paying their mortgage, 13 May 2021

rising mortgage rates. Cost of living support measures introduced by lenders (see section 1) may have moderated the rise to some extent.

Mortgages in arrears by 2.5% or more of the total balance

Percent of total mortgages outstanding, UK



Source: UK Finance, Industry Data Tables, Table AP2

2.2 Repossessions in the UK

UK Finance also publishes quarterly figures on the number of mortgaged properties taken into possession. The charts below show quarterly trends in the number of properties repossessed and the proportion of these that were voluntary.

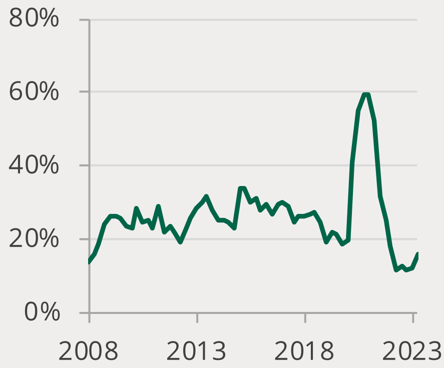
Repossessions have been declining in the long-term: around 8,000 properties were taken into possession in 2019, compared with 48,900 in 2009.

Repossessions dropped in Q2 2020, but have since risen

Homes taken into possession per quarter, UK

A higher percentage of possessions were voluntary in 2020

% of possessions that were voluntary, UK



Source: UK Finance, Industry Data Tables, Table AP4

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.[33]

Repossessions fell further after April 2020. Around 230 properties were repossessed in the second quarter of 2020, followed by 380 in the third quarter and 330 in the fourth.[34]

The number of repossessions started to rise again in 2021, reaching over 1,200 in the first quarter of 2023 – but this figure is still considerably below the average of 2,000 possessions per quarter in 2019.[35]

An industry-wide moratorium on repossessions (except for in exceptional cases, such as a borrower requesting that proceedings continue) was in place between March 2020 and 1 April 2021. For this reason, most repossessions during this period were voluntary.

Repossession in the courts in England and Wales

When repossession is not voluntary mortgage lenders 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.
- The court will grant some of these possession orders.
- For a repossession to take place, the order must be followed by the issue and execution of a warrant for possession. Mortgage lenders do not always follow through with requesting and executing a warrant.
- Nearly half of possession orders are suspended. This means they are not enforced as long as the defendant complies with certain terms to do with repaying arrears. In some cases, however, repossessions are carried out by county court bailiffs.

The chart on the next page shows trends in possession-related activity as reported by the Ministry of Justice. Possession activity in the county courts was minimal between April 2020 and March 2021 due to the moratorium on possession proceedings during the Covid-19 pandemic (see section 4). It began to rise again in the second and third quarters of 2021.

33 Ministry of Justice, Mortgage and Landlord Possession Statistics: April to June 2020 Bulletin, 13 August 2020, p5

34 UK Finance, Arrears and possessions, 10 August 2023

35 As above

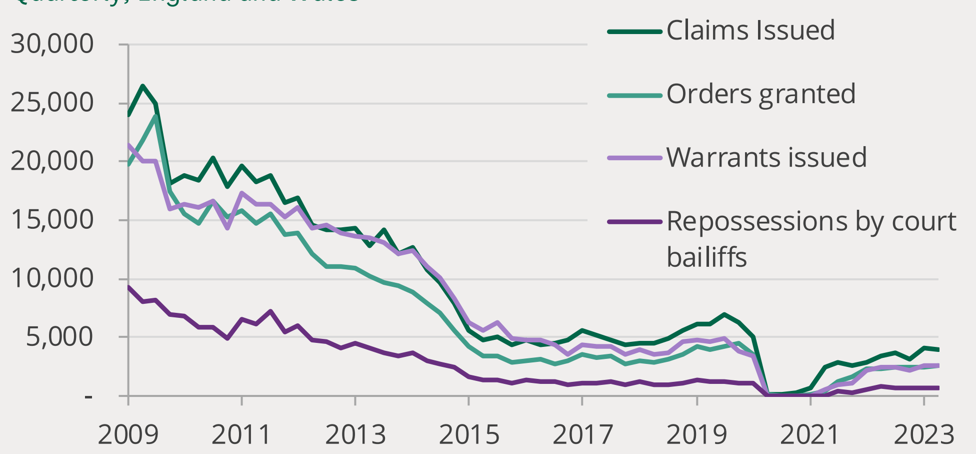
Activity in the second quarter of 2023 was still lower than before the Covid-19 pandemic. There were 3,986 possession claims, 43% lower than the 6,983 claims in the third quarter of 2019. There were also 2,536 orders granted (39% lower than in the third quarter of 2019), 2,654 warrants issued (46% lower), and 642 possessions (47% lower).

Court action on repossession had been in decline before 2020. There was a peak in the issue of possession claims 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).

Possession activity in the county courts

Quarterly, England and Wales



Source: Ministry of Justice, Mortgage and landlord possession statistics: April to June 2023, Table 1

3 Advice and support for constituents struggling with mortgage repayments

3.1 Sources of advice

The best way to address a debt problem will vary with each case. Much will depend on factors such as the amount of debt someone has 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 or organisation is advisable at an early stage. The independent Money Helper website 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 Helper website also provides information 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.
- Citizens Advice provides information on dealing with mortgage arrears and a free online budgeting tool.
- The National Homelessness Advice Service has an advice guide for the public: Are you worried about your mortgage? (PDF).
- Shelter's website offers information on mortgage arrears and repossession, including how to deal with mortgage arrears, the repossession process, ways to prevent it, and where to get advice.
- The GOV.UK website gives information on repossession.

3.2 Financial assistance: Support for Mortgage Interest scheme

The Support for Mortgage Interest (SMI) scheme provides financial assistance towards owner-occupier costs (principally mortgage interest payments) for claimants of certain means-tested benefits. SMI used to be a social security benefit but became a loan scheme in 2018.

The rules on eligibility and the amount of assistance available through SMI are outlined on the GOV.UK 'Support for Mortgage Interest' webpage.

The Commons Library briefing on Support for Mortgage Interest loans provides further information and commentary on the scheme.[36]

3.3 Debt respite scheme: 'Breathing Space'

The debt respite scheme, Breathing Space, was introduced in 2021.[37] The scheme provides eligible individual debtors with 'problem debt' (such as mortgage arrears) a period of protection from their creditors known as a 'breathing space moratorium'.

The aim is to give people a period without the stress caused by spiralling debt and impending enforcement action, during which they are expected to access professional debt advice.

The protections include pausing most enforcement action and contact from creditors and freezing most interest and charges on debts. The scheme provides stronger protections for those receiving mental health crisis treatment. The Commons Library briefing on the Debt Respite Scheme – a breathing space for those in debt provides further information.[38] As of May 2023 over 130,000 people had accessed the scheme's protections.[39]

3.4 Lenders' obligations: Avoiding repossession

If an owner-occupier falls into mortgage arrears, before they seek possession of a property lenders must demonstrate they have adhered to the Financial

36 Commons Library research briefing CBP-6618, Support for Mortgage Interest loans
37 The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020 (SI 2020/1311) came into force on 4 May 2021.
38 Commons Library research briefing CBP-9256, Debt Respite Scheme – a breathing space for those in debt
39 PQ 188761 [on Credit: Interest Rates], 15 June 2023

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. This protocol came into force on 19 November 2008. The Chief Secretary to the Treasury explained its function:

> ...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 published by the Civil Justice Council alongside the Chief Secretary's statement. The council said it was "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 protocol was amended to extend the steps a lender is required to take before starting a possession claim for mortgage arrears, and to include a checklist for lenders to evidence compliance. For example, submitting a claim for the Support for Mortgage Interest scheme 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 homeowner how much they owe
- consider a request from the homeowner to change the way they pay their mortgage
- respond to any offer of payment made by the homeowner
- give reasons for turning down an offer of payment within 10 days
- give the homeowner a reasonable amount of time to consider any proposal they make

40 HC Deb 22 October 2008 c10WS

41 Civil Justice Council, New Pre Action Protocol Launched for Mortgage Possession Cases, 22 October 2008

- give the homeowner a written warning 15 days before they plan to start court action
- tell the homeowner the date and time of a repossession hearing
- let the council know within five days of getting notification of the date of the court hearing, in case the householder needs to apply to the council as homeless[42]

3.5 Assisted Voluntary Sales

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 the homeowner is 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.[43]

The National Homelessness Advice Service's (NHAS) factsheet on How to exit homeownership through a voluntary or assisted voluntary sale (AVS) (PDF) provides information 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 repossession, such as:

- less stress as a result of avoiding repossession and the sudden loss of the home and lower shortfall debts
- less disruption to work or children's schooling, since the move will be planned

42 GOV.UK, Repossession – before it goes to court (accessed on 20 September 2023)

43 National Homelessness Advice Service, How to exit homeownership through a voluntary or assisted voluntary sale (AVS) (PDF), April 2018, p5

- increased likelihood of a positive outcome where an application for social housing is made to the local authority
- the homeowner may achieve a better sale price for their home.[44]

Everyone's circumstances are different so individuals should always seek independent professional advice on their specific circumstances.

3.6 Legal advice

Low-income households facing possession proceedings may be entitled to free legal aid. GOV.UK's webpages on legal aid explain the eligibility criteria.

From 1 August 2023, the Legal Aid Agency has introduced a new Housing Loss Prevention Advice Service (HLPAS) in England and Wales to provide:

- early legal advice on housing, debt and welfare benefits issues to those at risk of possession proceedings and loss of their home
- on the day emergency advice and representation at court to those with a listed possession hearing

Individuals who require this service do not need to meet legal aid financial eligibility rules but are required to show evidence they are at risk of losing of their home.[45]

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)[46] issued non-statutory guidance to local authorities on lender notification of repossession proceedings to local authorities.[47] The guidance encourages local authorities

44 National Homelessness Advice Service, How to exit homeownership through a voluntary or assisted voluntary sale (AVS), April 2018, p5

45 LAA, Housing Loss Prevention Advice Service launch, 1 August 2023; and GOV.UK, Legal aid for possession proceedings, last updated 7 August 2023

46 Now the Department for Levelling Up, Housing and Communities (DLUHC).

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

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 an early stage to prevent and relieve homelessness in their areas. It requires authorities to provide homelessness services to all those affected, not just those who have 'priority need'.

Repossession and intentional homelessness

Local authorities have a statutory duty, under Part 7 of the Housing Act 1996 (as amended), to provide accommodation for households and individuals who are eligible for assistance (defined in terms of immigration status), unintentionally homeless and in 'priority need'. The Government's Homelessness Code of Guidance for Local Authorities provides the following guidance on applying the statutory criteria to determine whether an applicant is intentionally 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. Housing authorities should be alert to the impact of economic abuse and control and coercion on a victim of domestic abuse's ability to meet rent or mortgage payments.
>
> ...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.[48]

3.8 Lenders' obligations: After repossession

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

- market the property for sale as soon as possible, and
- 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[49]

If the sale results in a shortfall, the FCA Mortgages and Home Finance: Conduct of Business Sourcebook sets out what the lender must do if the loan

48 DLUHC, Homelessness Code of Guidance for Local Authorities, last updated 31 May 2023, paras 9.18-9.19

49 FCA, MCOB Mortgages and Home Finance, section 13.6 Repossessions, para 13.6.1

is regulated by the FCA.[50] The Council of Mortgage Lenders[51] summarised the requirements as follows:

> **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.[52]

[50] FCA, MCOB Mortgages and Home Finance, section 13.6 Repossessions, paras 13.6.3-13.6.5

[51] The Council of Mortgage Lenders became part of the newly established UK Finance in July 2017.

[52] Council of Mortgage Lenders website, What happens if repossession occurs? (accessed on 20 June 2017 – no longer available online)

4 Covid-19: Mortgage support measures

During the coronavirus outbreak, the Government put measures in place, including job protection schemes and temporary changes to the social security system, to support household incomes. In addition, it worked with the Financial Conduct Authority (FCA) to implement temporary measures to:

- assist homeowners to manage their mortgage repayments and thereby avoid mortgage arrears, and
- suspend repossession proceedings by lenders against homeowners in mortgage arrears.

4.1 Mortgage payment holidays

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

On 17 March 2020, the Chancellor announced measures to support businesses and individuals, including a commitment by mortgage lenders to offer homeowners a "holiday" of up to three months from their monthly mortgage payments.[53]

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

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."[54]

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.[55] Homeowners had up to 31 October 2020 to request an initial or further payment holiday.[56]

53 HM Treasury, Chancellor announces additional support to protect businesses, 17 March 2020
54 FCA, Mortgages and coronavirus: our guidance for firms, 20 March 2020
55 FCA, FCA Announces support for customers who are struggling to pay their mortgage due to coronavirus, 22 May 2020
56 As above

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 could be taken.[57]

The FCA published updated Payment Deferrals Guidance on 17 November 2020 setting out the enhanced support firms were expected to provide to mortgage borrowers facing temporary payment difficulties. In short, borrowers were able to access payment deferrals for up to a maximum of six months and had until 31 March 2021 to apply for an initial or a further payment deferral. All payment holidays had to end by 31 July 2021.[58]

Lenders were required to give customers adequate information to understand the implications of a payment holiday. Mortgage payment holidays granted up to 31 March 2021 were not to be recorded as arrears nor have a negative impact on the customer's credit score.[59]

In total, nearly three million Covid-19 payment deferrals were granted by mortgage lenders between March 2020 and March 2021.[60]

Ongoing tailored support

The FCA's Tailored Support Guidance requires firms to continue providing tailored support to borrowers facing ongoing financial difficulties as a result of Covid-19.[61]

The FCA has consulted on incorporating aspects of the support guidance into its Mortgages and Home Finance: Conduct of Business rules to strengthen the framework for firms to better support customers facing payment difficulties. Consultation closed for submissions on 13 July 2023.[62]

4.2 Repossessions

In March 2020, the FCA advised lenders to exercise forbearance during the Covid-19 emergency.[63] The FCA's announcement on 22 May 2020 confirmed

57 HM Treasury, Furlough Scheme Extended and Further Economic Support announced, 31 October 2020

58 FCA, FCA confirms support for mortgage borrowers impacted by coronavirus, 17 November 2020

59 FCA, Mortgages and coronavirus: information for consumers, updated 11 August 2021. 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.

60 UK Finance, Arrears and Possessions: Q3 2021, 11 November 2021

61 FCA, Finalised guidance - Mortgages and Coronavirus: Tailored Support Guidance, updated 27 January 2021

62 FCA, CP23/13: Strengthening protections for borrowers in financial difficulty: Consumer credit and mortgages, 25 May 2023

63 FCA, Mortgages and coronavirus: our guidance for firms, 20 March 2020. Forbearance is an agreement between the lender and the borrower to delay repossession proceedings subject to certain conditions, such as agreeing a repayment plan.

the suspension of repossession proceedings would continue to 31 October 2020.[64]

The FCA subsequently confirmed a moratorium on the enforcement of lender repossession, aside from in exceptional cases (such as a borrower requesting proceedings continue), would remain in place until 31 January 2021.[65] This was subsequently extended to 1 April 2021.[66]

In addition, the Master of the Rolls suspended all housing possession claims through the courts from 27 March to 21 September 2020. A ban on the enforcement of possession orders by bailiffs was also in place from November 2020 to 31 May 2021. These measures are discussed in detail in the Commons Library briefing on Coronavirus: Support for landlords and tenants.[67]

The FCA moratorium on enforcing repossession was lifted from 1 April 2021. However, FCA guidance continues to require lenders to treat consumers affected by the pandemic fairly.[68]

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64 FCA, FCA Announces support for customers who are struggling to pay their mortgage due to coronavirus, 22 May 2020

65 FCA, FCA announces further proposals to support mortgage borrowers impacted by coronavirus, 2 November 2020

66 FCA, FCA provides update on support for consumers impacted by coronavirus, 5 March 2021

67 Commons Library research briefing CBP-8867, Coronavirus: Support for landlords and tenants,

68 FCA, Finalised guidance - Mortgages and coronavirus: Tailored Support Guidance, 25 March 2021, paras 7.3-7.5

5 Historical schemes to support homeowners

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

5.1 Preventing Repossessions Fund

In May 2009 the Labour Government announced the Preventing Repossessions Fund. This extra funding was 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." [69] Deployment of the loans was left to local authorities. The expectation was that repayments should be recycled to help other households.

The loans ranged from £1,000 to £3,000 per household and were capped at £5,000. A 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.[70]

On 9 February 2012 the Coalition Government announced an allocation of £20m for local authorities for a new Preventing Repossessions Fund.[71]

69 Department for Communities and Local Government (DCLG), Preventing Repossession Fund, May 2009

70 HC Deb 26 June 2009 c1198W

71 DCLG, £20m for safety net against repossessions, 9 February 2012

5.2 Mortgage rescue schemes

During the financial crisis in the early 1990s, the Conservative Government implemented several measures to alleviate pressure on mortgagors with arrears. One measure involved large lenders committing to establish 'mortgage-to-rent schemes' with the assistance of housing associations. These schemes involved a housing association purchasing the homeowner's property, enabling the household to remain in the property as a tenant paying rent. The impact of the schemes was soon downplayed in practice, one press report estimated the number of borrowers 'rescued' in this way to be as low as 50.[72] Such schemes are complex to devise and implement, and homeowners often have limited enthusiasm for them, preferring options aimed at helping them retain their homes.

Before the 2008 financial crisis, some local authorities were operating not-for-profit 'mortgage rescue schemes' in partnership with local housing associations. Typically, these schemes involved a housing association purchasing the house – or a portion of it – and then leasing it back to the original owner, who continued to live there as a tenant. Sometimes the previous owner had the opportunity to buy back the house when their financial circumstances allowed.

Labour Government's Mortgage Rescue Scheme

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 the enhanced scheme, by preventing this number of households from being repossessed, would have a monetised benefit of £390 million.[73] 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.

72 'More homes at risk as mortgage rescue fails', The Guardian, 30 July 1992
73 DCLG, Homeowners Support Package: Impact Assessments, September 2008, p19

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.[74]

On 22 October 2008, the Government confirmed the scheme would be fully operational from January 2009. On 24 November 2008 it was announced that more than 60 local authorities would be fast-tracking the scheme by taking applications from the beginning of December 2008. The scheme would also be enhanced to cover vulnerable families at risk of repossession because of additional loans secured on their home.[75]

The Department of Communities and Local Government (DCLG) produced a booklet: About the mortgage rescue scheme: Government mortgage to rent (PDF, now archived). In the 2009 Budget, the Government announced it would be "widening the eligibility criteria for the Mortgage Rescue Scheme so that households in negative equity are not excluded."[76] A response to a parliamentary question later confirmed this was provided that their loan to value ratio was less than 120 per cent. [77] This was only relevant to the Mortgage to Rent rescue scheme.

An evaluation of the Mortgage Rescue Scheme and Homeowner Mortgage Support Scheme (see section 5.3) was commissioned by DCLG in 2009. The researchers published an interim report on 23 July 2010. They reported strong support for the Mortgage Rescue Scheme 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.[78]

The Housing Minister, then Grant Shapps, confirmed the scheme would remain in place but would be refocused to deliver improved value for money

74 DCLG, Billion pound package for housing, 2 September 2008

75 DCLG, Real help now to support homeowners through difficult times, 24 November 2008

76 HM Treasury, Budget 2009: Building Britain's Future (PDF), p104

77 HC Deb 27 April 2009 c1120W

78 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

with a reduction in the grant rate paid to housing associations and tighter caps on property price and repair costs.[79]

In October 2010 DCLG allocated a further £221 million to continue the scheme until spring 2013. It 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 the scheme 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.[80] The final mortgage rescue monitoring statistics provided by DCLG were published in May 2011.[81]

Closure of the Mortgage Rescue Scheme

The Greater London Authority (GLA) took over responsibility for the Mortgage Rescue Scheme 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 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.[82]

Outside London, the Mortgage Rescue Scheme closed to new applications on 31 March 2014. Director General of the Council of Mortgage Lenders, Paul Smee, commented on the imminent closure of the Mortgage Rescue Scheme 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.[83]

5.3 The Homeowner Mortgage Support scheme

During debate on the Queen’s Speech on 3 December 2008, the Prime Minister announced a new scheme would be launched to assist people who were

79 DCLG, Grant Shapps outlines Government support for struggling homeowners, 20 July 2010
80 DCLG, No room for complacency despite fall in home possessions, 10 February 2011
81 DCLG, Mortgage Rescue Scheme monitoring statistics – March Quarter 2011, 12 May 2011
82 ’London councils scrap mortgage rescue scheme ahead of schedule’, The Guardian, 23 November 2013
83 CML, Market Commentary, December 2013

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;
> - 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.[84]

On 21 April 2009 the scheme was formally announced in a statement to Parliament.[85]

Full details of the scheme can be found in a DCLG leaflet, Guide to Homeowners Mortgage Support (PDF, now archived). It was reported after April 2009 that the larger banks taking up the scheme were those owned or

[84] HM Treasury, The Homeowner Mortgage Support Scheme, 10 December 2008
[85] HC Deb 21 April 2009 5WS

controlled by the state, and that those outside of Government control had not taken part.[86]

In September to October 2009, the Citizens' Advice Bureau's Adviser magazine published an article discussing some of the advantages and disadvantages of the HMS scheme.

The 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.[87]

As noted above, interim findings of an evaluation of the Mortgage Rescue Scheme and the HMS scheme were published on 23 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.[88]

On 20 July 2010 Grant Shapps announced 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.[89]

5.4 Evaluation of historical schemes

There is a view that lessons learned during the recession of the early 1990s were successfully applied during the 2008 financial crisis. In particular, the

86 'Mortgage support scheme shunned', Financial Times, 22 April 2009; 'More than 500,000 homeowners not covered by HMSS scheme', Roof Magazine, 22 April 2009

87 'Mortgage Rescue and Homeowner Mortgage Support', Adviser, September-October 2009

88 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, pp6-7

89 DCLG, Grant Shapps outlines Government support for struggling homeowners, 20 July 2010

exercise of forbearance by the main mortgage lenders was a key factor behind the relatively low number of repossessions arising from the financial crisis in 2008. There was little point in lenders pursuing repossessions and releasing additional properties into an already depressed housing market.

The Mortgage Rescue Scheme (see section 5.2) 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 to 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. [90]

The housing and homelessness charity Shelter argued for the scheme's simplification and for an extension of funding.[91] An Inside Housing article in August 2009 reported the number of housing associations involved with the scheme meant its capacity was limited. It also suggested that most applicants could not afford the shared equity option, potentially making the scheme more expensive than anticipated.[92]

The problems experienced in the early stages were confirmed in a National Audit Office (NAO) evaluation report published on 25 May 2011, although the report acknowledged that many of the defects of the scheme were subsequently addressed.[93]

In total, the scheme directly assisted around 5,000 households to remain in their homes and avoid repossession.[94]

On 9 December 2009 John Healey, then Housing Minister, said only 15 homeowners had made use of the formal Homeowner Mortgage Support scheme (see section 5.3), however, many more households had negotiated flexible repayment packages with their lenders. According to lenders and money advice agencies, the Mortgage Rescue Scheme and the Homeowner Mortgage Support scheme were key in encouraging homeowners to seek early help, enabling them to reach agreements with their lenders and to stay in their homes.[95]

The evaluation of both schemes published in July 2010 also referred to the small numbers assisted by the Homeowner Mortgage Scheme, but there was agreement that these schemes had significantly influenced lenders' own

90 HC Deb 2 June 2009 c153

91 See: 'Slow take-off for government's mortgage rescue scheme', The Guardian, 29 May 2009 and 'Slow start for mortgage help plan', BBC News Online, 29 May 2009

92 'Mortgage rescue flounders', Inside Housing, 21 August 2009 [Login required]

93 NAO, The Mortgage Rescue Scheme, HC 1030, Session 2010-2012, 25 May 2011

94 CML, Market Commentary, December 2013

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

forbearance schemes. The interim report concluded there was a case for continuing both schemes until the housing market recovered.[96] The Homeowner Mortgage Support scheme closed at the end of March 2011 and the Mortgage Rescue Scheme closed at the end of March 2014 having 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) 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.[97]

Research by the Department for Work and Pensions (DWP) published in May 2011, An evaluation of the January 2009 and October 2010 arrangements for Support for Mortgage Interest (PDF), confirmed the important role played by the extension of the social security safety net in preventing repossessions. However, it also noted that "lenders are increasingly showing signs of reconsidering their approach to forbearance as arrears mount." The reduction in the standard interest rate with effect from 1 October 2010 was highlighted as an issue, as was the decision to limit to two years the period in which Job Seeker's Allowance claimants could benefit from the Support for Mortgage Interest scheme.[98]

In 2010 the Labour Government said over 330,000 households had received help and advice with their mortgages, with many using the dedicated mortgage help website launched in September 2009.[99]

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.[100] The research found 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 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:

96 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

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

98 This only affected new claimants after 5 January 2009.

99 DCLG, John Healey extends Government help to tackle repossessions, 25 January 2010

100 ConsultCIH, Analysis of Housing Repossessions in the South West, 2009

> 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.[101]

Joint research by AdviceUK, Citizens Advice and Shelter, published in December 2009, also found a significant number of lenders were failing to comply with the pre-action protocol, particularly sub-prime lenders.[102]

101 CIH Press Notice, 16 December 2009

102 AdviceUK, Citizens Advice and Shelter, Turning the Tide?, December 2009

6 Private sector mortgage rescue schemes: 'Sale and rent back'

The private sector 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 unregulated before 2010 and could leave ex-owners facing substantial rent charges or eviction as assured shorthold tenants currently have no long-term security of tenure.

Inquiry into sale and rent back schemes

In May 2008 the Office of Fair Trading (OFT) launched an inquiry into the SRB sector, prioritising the matter due to the financial crisis.[103]

The final OFT report (15 October 2008) raised concerns about management within the sector and recommended regulation to better protect customers. This included an obligation on SRB firms to be more transparent about the terms and cost of the deal, and a requirement for homeowners to be informed about the free and independent advice available to them.[104] On 22 October 2008 the Chief Secretary to the Treasury said the Government would accept the OFT recommendations in full.[105]

Strengthening the regulation of sale and rent back schemes

On 6 February 2009 the Treasury launched a consultation on strengthening protection for vulnerable homeowners, which closed on 1 May 2009.[106] 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:

103 OFT, OFT launches market study into sale and rent back, 14 May 2008
104 OFT, Sale and Rent back: an OFT market study, 15 October 2008
105 HC Deb 22 October 2008 c10WS
106 HM Treasury, Regulating the sale and rent bank market: a consultation, February 2009

- it prohibits exploitative advertising, high-pressure sales techniques and 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
- it prohibits firms from cold calling and 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
- measures to ensure all risks are clearly signposted to the customer, via FSA literature and during the sales process[107]

In March 2011, the FSA undertook a thematic review of the SRB market.[108] 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.[109]

As a result, 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."[110]

As the FSA started to regulate SRB transactions it became apparent that many (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.[111] As a result, in 2011 the Government made a technical amendment to the test to make it clear that firms in the SRB market acting 'by way of business' are carrying on a regulated activity unless they are closely related to the homeowner selling the property. [112]

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107 FSA/PN/016/2010, FSA introduces further protections for sale and rent back customers, 29 January 2010. See also: Commons Library research briefing CBP- 5354, The regulation of sale and rent back agreements, 11 March 2010

108 FSA, Sale and Rent Back Review 2011 (PDF), July 2012

109 As above, para 1.3

110 As above, para 1.7

111 HM Treasury, Impact Assessment: Renewing the sale and rent back 'by way of business' amendment (PDF), 18 July 2014, p4

112 The Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) (Amendment) Order 2011 (SI 2011/2304)

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 included a 'sunset' provision for the amendment to cease to have effect on 1 January 2022.

In April 2013, the Financial Conduct Authority took over responsibility for the regulation of SRB transactions from the FSA. The Money Helper website has published independent information on sale and rent back schemes.