

Strategies when Mortgages are Unaffordable



Disclaimer

England and Wales only

The strategies and tactics in this chart do not constitute an exhaustive list as there may be further options to consider. Always base advice on the circumstances and wishes of the client. The information is accurate as of July 2022. We cannot be held responsible for changes in the law or developments in case law since this was published.

Strategies when Mortgages are Unaffordable

This chart illustrates options when there is not enough money to pay the mortgage. Many of these options can be used in a combined approach to tackle mortgage debt. It is a basic guide and more detailed references should always be checked.

Abbreviations: CCA – Consumer Credit Act, CMI – current monthly instalment, FOS – Financial Ombudsman Service, FCA – Financial Conduct Authority, LA – Local Authority, MCOB - Mortgages and Home Finance: Conduct of Business sourcebook, MRS – Mortgage Rescue Scheme, SFS- Standard Financial Statement, SRB – Sale and Rent back, UC – Universal Credit.

First mortgages and secured loans

Actions or options to consider in all cases

- Check for mortgage payment protection insurance. Consider a complaint to FOS if claim is unsuccessful.
- Make the lender aware of the situation and update them with any changes in circumstances.
- Use the SFS with the client to check ability to pay CMI plus something off arrears.
- Pay as much as possible towards the CMI. Negotiate reduced payments with any unsecured creditors.
- Support for mortgage interest (SMI) – if eligible for a qualifying means-tested benefit (such as UC) and the lending is eligible for help, SMI loan may help with affordability. **WARNING:** unless in receipt of UC, SMI only covers the original house purchase and home improvements. If not in receipt of UC, most secured loans will not be eligible for SMI.
- Maximise income – check benefit entitlement. If non-dependants, check impact on benefits and whether they are contributing to the household.
- Consider a lodger and 'rent a room scheme' – where some income from lodger is tax-free.
 - **WARNING:** need permission from the mortgage/secured lender;
 - check impact on any household insurances, including possible increase in premiums;
 - make aware of responsibilities, including right to rent check in England;
 - check impact of extra income on means-tested benefits (although rent from a lodger is not treated as income for UC); and
 - consider impact on entitlement to single person discount for council tax and council tax reduction.
- Where appropriate, consider flexible tenure options such as asking the lender if they will consider part-rent and part-buy or sale and rent back schemes. Watch out for private companies offering sale and rent back schemes.
- Consider a complaint about irresponsible lending, terms of loan, post-contract conduct of lender or challenge enforceability? Complain to FOS or consider court action. **Note:** unenforceability issues are more likely to occur with secured loans.
- Is there an Unfair Relationship? (This only applies to secured loans taken out under the CCA before 21st March 2016).
- If the lender is considering taking possession action, are they following the mortgage pre-action protocol?
- If client does not want to stay in property (even if affordable), consider voluntary sale or downsizing. Check if lender offers an assisted voluntary sale scheme. If there is equity in property, check impact of capital from the sale on means-tested benefits and advise to check tax position – and whether qualifies for full Private Residence Relief.

Lender forbearance options

Note: if arrangement in place, check that all arrears, default and late payment penalties have stopped. Consider a complaint to FOS if lender continues to charge.

Payment of CMI plus regular amount for arrears.	Reduce or waive arrears charges.	Payment holiday.
Short-term reduction in payments.	Allow time to sell using assisted voluntary sale schemes. (Bear in mind intentional homelessness.)	Lengthen term of loan to reduce monthly payments. Capitalisation of arrears will usually be a last resort for the lender under MCOB 13.3.4.
Convert to interest-only repayments (but consider repayment vehicle in the long-term).	Formal loan modification (usually temporary).	Check with lender for their own in-house forbearance schemes.
Check that the lender is complying with FCA guidance such as the Mortgages and Coronavirus: Tailored Support Guidance and rules for dealing with customers in financial difficulty, such as MCOB.		

Options

Equity in property

Inability to pay full CMI expected to be temporary

- Consider Breathing Space if other debts are affecting ability to pay mortgage and client needs time to consider options.
- Is there scope to re-mortgage on better terms or to find a cheaper mortgage deal elsewhere?
- Consider a re-mortgage with first lender to include any secured loan.
- Time order if a regulated mortgage contract under FSMA (Regulated Activities) Order 2001 and eligible under s.126 of the CCA 1974.
- Check if there are any local authority or charitable funds available to help prevent repossession.

Inability to pay full CMI expected to be long-term

- Consider applying for breathing space if time is needed to get debt advice and consider overall debt options.
- Is there scope to re-mortgage on better terms or to find a cheaper mortgage deal elsewhere?
- Consider a re-mortgage with first lender to include any secured loan.
- Time order if a regulated mortgage contract under FSMA (Regulated Activities) Order 2001 and eligible under s.126 of the CCA 1974. **WARNING:** if inability to pay is permanent, a time order may be turned down.
- Consider equity release to clear the mortgage and allow client to stay in their home, but it is vital to obtain specialist advice about how appropriate this is for the client.
- Commercial SRB. A last resort and a good option in very few cases. Ensure SRB firm is FCA authorised.
- Beware of companies offering quick house sales at less than market value. They may undervalue the property and include very high fees.
- Check if the local authority offers any help to prevent repossession. Do they still offer help through an MRS or SRB scheme? If so, each scheme will have its own rules and eligibility criteria.

No equity in property

Inability to pay full CMI expected to be temporary

- Consider breathing space if other debts are affecting ability to pay mortgage and client needs time to consider options.
- Is there scope to re-mortgage on better terms or to find a cheaper mortgage deal elsewhere? This might help if there is an expensive secured loan and the reduction in the CMI would make a re-mortgage affordable. This would be dependent upon the total cost of all lending compared to the lack of equity in the property.
- Time order if a regulated mortgage contract under FSMA (Regulated Activities) Order 2001 and eligible under s126 of the CCA 1974.
- Check if there are any local authority or charitable funds available to help prevent repossession.

Inability to pay full CMI expected to be long-term

- Consider applying for breathing space if time is needed to get debt advice and consider overall debt options.
- Although unlikely, check if there is scope to re-mortgage on better terms or to find a cheaper mortgage deal elsewhere? This might help if there is an expensive secured loan and the reduction in the CMI would make a re-mortgage affordable. This would be dependent upon the total cost of all lending compared to the lack of equity in the property.
- Voluntary sale, or if lender has an assisted voluntary sale scheme there may be an element of 'write-off' on shortfall.
- Hand back the keys – rarely a good option as any shortfall will follow the borrower, so this would usually be combined with a debtor bankruptcy petition, or a DRO application (if qualifies once the property had been sold).
- Time order if a regulated mortgage contract under FSMA (Regulated Activities) Order 2001 and eligible under s126 of the CCA 1974. **WARNING:** if inability to pay is permanent, a time order may be turned down.
- Check if the local authority offers any help to prevent repossession. Do they still offer help through an MRS or SRB scheme? If so, each scheme will have its own rules and eligibility criteria.