

# Notes for defendant - mortgaged residential premises

The claimant has asked the court to make an order that you give up possession of the premises mentioned in the claim form. You should note that no-one can evict you from the property unless the court says that they can; the court will not make a decision before the hearing date. What you do may affect the court's decision. You should therefore take action immediately. These notes explain in more detail what you can do.

You should:

- get help and advice immediately from a solicitor or advice agency (see 'Getting help' below);
- fill in the attached defence form and return it to the court within 14 days of receiving the claim form;
- attend the hearing, even if you have agreed about repayment of any arrears with your mortgage lender.

## What will happen at the hearing?

A judge will decide whether or not to make an order for possession.

In making this decision, the judge will take account of the information provided by the claimant. The judge will also take account of any information you provide, such as details of your personal and financial circumstances, any proposal you have made to pay off any arrears, and any

dispute you have about the amount owing. But the judge can only take the information into account if you provide it. Fill in these details on the defence form and attend the hearing. It is in your best interests to do both.

## What kind of orders can the judge make?

The judge can:

- decide not to make an order
- make an order for possession but suspend it. This means that you will not have to give up possession so long as you can pay off any arrears in a reasonable time (the judge will decide how long) and pay the instalments as well;
- make a possession order for some future date to allow you time to move out or find somewhere else to live; or
- make an order that you give up possession a very short time ahead.
- if the loan agreement is 'regulated' (see paragraph 4 of the particulars of claim) the judge can make other orders which may help you.

## Getting help

You should get help and advice immediately from a solicitor or an advice agency. This is particularly important whether or not you disagree with the claim. You may qualify for assistance from the Community Legal

Service Fund (CLSF) to meet some or all of your legal costs. Ask about the CLSF at any county court office or any information or help point which displays this logo. Court staff can only help you complete the defence form and tell you about court procedures. **They cannot give legal advice.**

*Community  
Legal Service*



### **Replying to the claim**

Although you should normally fill in the defence form and return it to the court within 14 days, the court will accept your defence at any time before, or even at, the hearing. You should note, however, that if you do return the form after the 14-day period, the court may order you to pay any costs caused by the delay.

### **Regulated consumer credit agreements**

If you intend to apply to the court to consider or change the terms of your agreement, you should get advice immediately.

### **Paying any arrears**

The court cannot accept payments. If you want to pay all or part of any arrears, send them to the claimant at the address for payment shown on the claim form, quoting the claimant's reference number, if one is given. Make sure you get receipts for all payments made. Proof may be required

if there is any disagreement. Make sure you include on your defence form details of any payments you have made since the claim was issued, saying how much was paid, to whom and when.

### **Enforcement of a possession order**

Where the court makes a possession order, the claimant can ask a bailiff or sheriff to evict you if:

- you do not give up possession on the date given in the order for possession; or
- you do not make payments in accordance with the suspended order for possession.

If your circumstances change after the possession order is made, you may apply to the court for the order to be varied. Use application form N244, which is available from any court office. You may have to pay a fee to make the application.

### **Registration of judgments**

If a county court makes a money judgment (e.g. for the balance due under the mortgage) your name and address will be entered in the Register of County Court Judgments if the claimant has to take steps to enforce the judgment. This may make it difficult for you to obtain credit.