



Time order – mortgage and secured loan

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A time order is a way of asking the court to give you more time to pay, if you have fallen behind with the payments on your mortgage or secured loan. A court can change the amount you have to pay each month, and how long your agreement will last.

Use this fact sheet to:

- find out what a time order is;
- understand how a time order can help;
- see if you can apply for a time order; and
- find out if you may have other options that can help.

What is a time order?

A time order is one way of asking a court to give you more time to pay if your lender is taking court action to repossess your property. It can change:

- the amount you have to pay each month; and
- how long the agreement will last.

In some cases, the court can also make an order to change the interest rate.

Can I apply for a time order?

The rules in the fact sheet apply to most agreements that are secured on land, such as your mortgage or a secured loan. These are called regulated mortgage contracts.

You will not be able to apply for a time order unless **all** of the following applies:

- a lender has provided you with credit;
- the debt is secured by a mortgage on land;
- no more than 60% of the land is used for business purposes, leaving at least 40% of the land that is not.

Certain types of agreement that are secured on land are not considered to be regulated mortgage contracts. This includes:

Warning:



Mortgage Credit Directive Order 2015

On **21 March 2016**, the **Mortgage Credit Directive Order 2015** changed the law on mortgages and secured loans. This fact sheet is based on our current understanding of the new rules. However, it is not yet clear how these rules will work in practice.

Before applying for a time order, **contact us for advice**.

Mortgage arrears guide

For more information about how to deal with arrears, see our detailed [Mortgage arrears guide](#).

This guide gives you information and advice if you are behind on your mortgage. It explains your options and the processes your lender must follow,

Use this guide to:

- find out if there is any help you can get;
- work out which option is right for you;
- help you negotiate with your lender; and
- get advice about how to deal with court action.

This guide also includes some useful contacts and links for you to get further information.



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- buy-to-let mortgage contracts;
- some secured loans if they are for business purposes; and
- some secured loans if the lender is a credit union.

If you are not sure if your agreement is a regulated mortgage contract, **contact us for advice**.

When can I apply?

You cannot usually apply for a time order unless lender takes court action to repossess your property. If you want to apply for a time order, **contact us for advice**.

Temporary financial difficulties

In **Southern & District Finance plc v Barnes**, the court of appeal also said that time orders should only normally be made if someone is in temporary financial difficulty. The court has not been clear about how to decide whether your difficulties are temporary or not. The court may only give a time order for a limited period. You may have to ask for any exceptional circumstances to be taken into account, or show that there is a good chance of your financial situation improving, for you to get a time order over a longer period.

However, in **Director General of Fair Trading v First National Bank**, the court looked at whether you need to be in temporary financial difficulties to have a time order. They said that **section 129 of the Consumer Credit Act 1974** allows the court 'to make such order as seems just to it in all the circumstances'.

- Argue that in your case it is reasonable for the court to make a time order over a longer period.
- Make sure the court takes all your circumstances into account.
- Explain how your financial circumstances are likely to improve, even if this is some years away.
- Point out that in the Barnes case, one of the time orders was made over 15 years and that was considered 'just'.

Is it 'just' to make a time order?

Information:



credit

Credit could be funds that are paid into your bank account, or to a solicitor helping you buy a property. You may also be able to argue that these rules apply to an overdraft agreement that has been secured against your property, contact us for advice.

Extra advice:



explain your circumstances

Anything you can say to show that your situation has occurred through no fault of your own will help when applying for a time order, because the court will look at your payment record. Make sure you show how you got into debt and why you took out the loan.



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Make sure you add any points that may help the court decide that your case is 'just'.

- Was the reason you took out the credit a good one?
- Could you afford the payments when you first took out the agreement?
- Was this loan not appropriate for what you needed when you took it out?
- Is your agreement very expensive? Point out if it has a high interest rate compared to other similar agreements and how much this means you would have to pay back over the whole period of the loan.
- Have you taken out further credit since? If so, was there a good reason for this?
- Have you had a good payment record until the point that you stopped paying?
- What is the reason for your non-payment? Have your circumstances changed? Explain the background to your situation.
- Have you tried to sort out your problems and asked the creditor for a payment arrangement to show that you haven't ignored the debt? If the creditor has refused to negotiate, you need to point this out. Start making the payments that you have offered to show goodwill.
- Is your situation temporary and likely to improve in the future? The court is likely to want to make a time order for a time-limited period only.

Remember:



the creditor's position

The court needs to look at your creditor's position as well as your circumstances.

Extra advice:



further help

If you think a time order may help your situation, it is usually best to seek help from a local advice agency. The result will depend on how the District Judge views your circumstances and the options open to them.

Unfair relationship test

A time order allows the court to change the terms of the agreement, so that it is easier to pay what you owe. The **Consumer Credit Act 2006** introduced a new option, called the 'unfair relationships' test.

This allows the court to look not only at the terms of the agreement, but also the behaviour of the creditor, to see if the relationship has been unfair to the borrower. The court has wide powers to alter terms of the agreement, or even to order the creditor to pay money back to you.

The test cannot be applied to first mortgages, and also does not apply to secured loans taken out on or after the **21 March 2016**.



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