

THE ASSOCIATION OF HER MAJESTY'S DISTRICT JUDGES

**RESPONSE TO THE CIVIL JUSTICE COUNCIL'S CONSULTATION PAPER
ON A MORTGAGE ARREARS PROTOCOL**

The Association represents all District Judges in the County Courts and District Registries of the High Court in England and Wales.

District Judges are responsible for case management of most civil claims issued in England and Wales, and conduct final hearings in over 80% of civil claims that go to trial; we deal with virtually all claims for possession issued by mortgagees of residential premises.

We welcome the Consultation Paper and the proposed protocol, and set out our responses to the questions posed as follows.

1. Do you consider a protocol for mortgage arrears cases would be helpful? If so, what do you consider would be the advantages? If not, why not?

We agree that a protocol would be helpful. Mortgage arrears cases are once more on the increase; many cases are resolved at court on agreed terms for the repayment of arrears. It would be to the advantage of all concerned if a process, such as the proposed protocol, were put into place to encourage parties to reach such agreement before proceedings are issued or at least before cases reach a hearing, so reducing the costs imposed on defaulting borrowers.

2. Will the protocol have any impact on your area of business or sector –particularly in terms of benefits or costs?

It is to be hoped that the protocol will reduce the number of possession cases being issued or coming to court, so freeing judicial resources.

3. What sector of the mortgage lender market is likely to be affected by the introduction of the protocol? Can you give details of the size/significance of this sector?

Many lenders already follow the guidance for conduct of mortgage business set out in the FSA handbook, but some do not. The protocol reflects that guidance and would have the beneficial effect of making the guidance a requirement for all those seeking possession orders in mortgage arrears cases.

4. Do you agree with the scheme of the protocol – i.e. early intervention when mortgage arrears begin; agreement of instalment payments; assistance to the borrower to gain benefits and manage debt; postponement of proceedings?

Yes.

5. What should the sanctions for non-compliance be?

It seems to us that the sanctions proposed are appropriate and indeed the only sanctions that could be imposed without primary legislation (for example to deprive a defaulting lender of the right to an order, which might be considered a step too far in any event).

6. Any other comments?

We look forward to the early introduction of the protocol.

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For and on behalf of the Association

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