

Set up to fail

**CAB clients' experience of mortgage and secured loan
arrears problems**

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December 2007

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Executive summary

1. Public policy on homeownership is currently geared towards encouraging more people to get on the housing ladder by tackling affordability. Policy initiatives have focussed on the initial cost of buying the home, rather than the risks of not being able to pay the mortgage over the lifetime of the loan, particularly if circumstances change.
2. Citizens Advice Bureaux are now dealing with increasing numbers of mortgage and secured loan arrears problems. In the last year, bureaux dealt with over 57,000 problems about mortgage and secured loan arrears, an 11 per cent increase on the previous year. At the same time, the number of county court possession claims has increased sharply and is now at a similar level to that seen during the mortgage arrears crisis of the 1990s, even though the number of loans in serious arrears is much lower. This suggests that lenders are taking court action more readily and are less willing to help borrowers in arrears.
3. This report is based on 1,200 case studies from 360 Citizens Advice Bureaux in England, Wales and Northern Ireland, a survey of CAB clients with mortgage or secured loan arrears and interviews with CAB clients and advisers. We also analysed mortgage possession cases listed in 23 county courts in January 2007.

Main findings

4. Most CAB clients seeking advice on mortgage and secured loan arrears are disproportionately from lower income households. They tend to borrow from sub-prime lenders at a higher rate of interest.
5. In many cases, CAB clients do not shop around for a good deal. Instead they rely on the recommendations made a broker. Often, they ended up with inappropriate and unaffordable mortgages and secured loans. Some of the people buying their council homes received particularly poor advice from brokers on the suitability of the loans they take out.
6. CAB evidence shows that many lenders and brokers do not ensure that borrowers understand the risks of entering into a mortgage, or that they can afford to make the increased payments when discounted or fixed rates ended. In some cases, lenders do not appear to have checked whether the borrower can afford the mortgage repayments from the outset.
7. Some borrowers also take additional secured loans for items such as home improvements or debt consolidation. In some cases, these are as large as their main mortgage. Many clients do not realise the risks and consequences associated with taking out further secured loans.
8. When borrowers fall into arrears, lenders should accept reasonable repayment arrangements, rather than repossess the house. But in many cases, lenders' arrears management practices increase the arrears problems

borrowers face by taking court action for possession rather than negotiate with the borrower. CAB evidence shows that sub-prime lenders tend to be less willing than mainstream mortgage lenders to negotiate with borrowers in arrears and are more likely to take court action for possession.

9. Our research shows that sub-prime lenders are responsible for a level of possession actions substantially above their market share. At possession hearings, courts do not check whether the lender has complied with regulation and may not apply existing legal safeguards and remedies available for borrowers. Lenders have little incentive to consider alternatives to court action, and so can take possession action quickly, adding substantial additional costs to the borrowers' debt.
10. The growth of mortgage arrears problems has been accompanied by the development of a new form of 'mortgage rescue'. In these sale and rent back schemes, the borrower sells their property to a private landlord at a discount and in return can rent the property back as a tenant. CAB evidence suggests that homeowners in a financially and emotionally vulnerable situation end up selling their houses for much less than they are worth, in return for a tenancy that offers little security of tenure.
11. Safety nets are also failing. Take-up of mortgage payment protection insurance (MPPI) has declined, falling to 22 per cent at the end of 2006, the lowest level since 1999.¹ The Government's income support for mortgage interest payment scheme (ISMI) is the protector of last resort for borrowers in the greatest need of help. However our evidence suggests that the ISMI safety net is failing to keep CAB clients out of serious arrears problems, because of the limited help that it offers. Borrowers have to wait up to 39 weeks, because there is an assumption that MPPI will pay their mortgage during this period. After the waiting period, help is limited to a maximum mortgage size well below current average house prices and to a standard interest rate much lower than the sub-prime rates that many CAB clients have to pay. Furthermore, there is no equivalent of housing benefit to help homeowners in low paid work meet their housing costs, leading to hardship for some CAB clients.
12. CAB evidence shows that the current system to protect consumers from unfair business practices in the mortgage and secured loan markets is not adequately dealing with the poor lending and arrears management practices outlined in this report. This is partly because two regulatory regimes apply. Whilst the Financial Services Authority (FSA) rules governing first charge mortgages are extensive, lenders are not always complying with them. Regulation of second charge lending by the Office of Fair Trading (OFT) has not been updated to take account of changes in the marketplace. The OFT also does not have a clear and pro-active compliance strategy.
13. Our evidence suggests that sustainable homeownership is a challenge for many low income households. Help with purchase price is important, but the

¹ Statistics from the Council of Mortgage Lenders (CML) website: www.cml.org.uk

effectiveness of safety nets, the court system and regulation of lenders' practices is essential, to prevent these borrowers from being set up to fail. All these elements have to work as a whole if the problems presented in this report are to be addressed. This requires better coordination of government policy and proactive regulation of bad businesses.

Key recommendations

- 14. All secured lending should be included in a unified regulatory regime that takes the best from the existing regimes.**
- 15. In the meantime, the FSA and the OFT need to ensure that lenders treat borrowers fairly, both when making lending decisions and collecting and enforcing arrears.**
- 16. The Ministry of Justice (MoJ) should develop a pre-action protocol to ensure that mortgage and secured lenders take court action for possession only as a last resort.**
- 17. The Government's strategies for financial inclusion and financial capability should take into account the needs of low income homeowners.**
- 18. The Government should ensure that the help available from the benefit system fits the needs of people borrowing from sub-prime lenders at higher rates of interest.**
- 19. The Government should develop rules for the cost and quality of MPPI for all mortgages and secured loans.**
- 20. The Government should develop a benefit, comparable to housing benefit, for low income homeowners in work.**
- 21. The Government should act to protect people who enter into sale and rent back schemes.**
- 22. The Government should develop a cross-departmental action plan to address the issues raised in this report.**

1. Introduction

- 1.1 In the UK, around 70 per cent of people own their own homes, and surveys consistently show a high level of aspiration towards homeownership from non-homeowners. For instance, in an August 2006 survey by NOP GFK for Citizens Advice 76 per cent of non-homeowners said that they would like to own their own home in the future.
- 1.2 Homeownership may not be for everyone, but is strongly linked to aspirations of social mobility, financial independence and family welfare, as the following quote from a CAB client highlights:

“I’ve owned my own property since my son was three years old... I was a single mother, and I wanted to be independent.”

Client G

- 1.3 These themes are echoed in the homeownership policies of both UK and devolved parliaments. For instance, the 2001 *Housing Strategy for Wales* points out that ‘home ownership can make a major contribution in combating social disadvantage’,² while the Government’s 2005 strategy paper *Sustainable Communities: Homes for all* points to a growing wealth gap between home owning and non-home owning households with the later at risk of being left behind and ‘missing out on the choices and opportunities that owner-occupiers enjoy’.³ More recently the 2007 Green Paper for Housing in England reaffirmed the Government’s commitment to “back young families’ aspirations” to own their own homes.⁴ For these reasons, Citizens Advice believes that all UK citizens should have a genuine choice of tenure. We support the goal of increasing access to homeownership, whilst at the same time we would point out that it is vital that people do not feel pressurised into homeownership because of the lack of good alternatives.
- 1.4 In the past 10 years, low interest rates and increased availability of credit have provided favourable conditions for low income households to enter into homeownership. But increasingly over time, rising house prices have made it more difficult and expensive for some first time buyers to get on the housing ladder.
- 1.5 As a result, the focus of government policy has been on finding ways to reduce the house prices faced by first time buyers in particular to help more people onto the housing ladder. Policy initiatives to achieve this have concentrated on increasing the supply of housing, and affordable housing in particular, but also on easing the burden of purchase for specific groups by means of shared equity schemes. At the same time it has continued with the discounts available through the right to buy and right to acquire schemes.

² *Better Homes for People in Wales: A National Housing Strategy for Wales*, National Assembly for Wales, 2001.

³ *Sustainable Communities: Homes for All*, Office of the Deputy Prime Minister, 2005.

⁴ *Homes for the future: more affordable, more sustainable: Housing Green Paper*, Department for Communities and Local Government (DCLG), 2007.

- 1.6 Whilst these initiatives are welcome, policymakers have paid little attention to what might happen to borrowers and low income borrowers in particular after they buy their house. This is despite the warning from the UK Government's Home Ownership Task Force on the barriers faced by traditionally disadvantaged groups in accessing and securing home ownership. In its final report, the task force highlights the sustainability of home ownership among such groups as a serious issue of concern, noting that '...the aim must be to ensure that the households who do experience the risks associated with homeownership do not experience unmanageable debt or homelessness as a result.'⁵
- 1.7 However, this is exactly what seems to be happening now. Since 2005, Citizens Advice Bureaux have been reporting an increase in enquiries about mortgage arrears. In 2005/06 Citizens Advice Bureaux dealt with 51,530 enquiries about mortgage and secured loan debt, and in the following year this had increased by 11 per cent to 57,352. The August 2006 survey by GfK NOP for Citizens Advice suggested that as many as 700,000 people had missed a mortgage or secured loan payment in last 12 months. More recently, a survey by YouGov for ROOF magazine found that six per cent of households relied on credit cards to meet their mortgage or rent payments.⁶
- 1.8 The number of county court actions for mortgage and secured loans has also risen steeply over the last few years. Between 2004 and 2006, the number of mortgage possession claims has increased by nearly 70 per cent and the number of possession orders actually made by 94 per cent.⁷ The number of possession actions in 2006 is now similar to that seen at the beginning of the mortgage repossession crisis in 1990. However statistics from the Council of Mortgage Lenders (CML) show that the number of mortgages in arrears of more than six months in 2006 was only about one third of the number in 1990. Similarly the number of repossessed properties in 2006 is only 52 per cent of the number seen in 1990.⁸
- 1.9 There is clearly a relationship between court action and the number of loans in arrears, but this seems to have changed over this period. In the 1990s, the growth of mortgage arrears and repossessions were caused by a substantial increase in interest rates and a major downturn in the economy. In comparison, recent rises in interest rates have been relatively modest and underlying economic conditions have remained benign. Instead it seems that the increase in court actions is being driven by changes in the mortgage market itself.
- 1.10 CAB evidence suggests that many of the people seeking advice about mortgage or secured loan arrears are borrowing from sub-prime lenders, which we define as lenders who specialise in lending to credit impaired and lower income households. Likewise, reports from CAB court advice desks in Kingston and Bradford suggest that a disproportionate number of the mortgage possession cases they have seen were taken by sub-prime lenders. This

⁵ *A Home of my own*, Report of the Government's Low Cost Home Ownership Taskforce, 2003.

⁶ Shelter press release, 17 October 2007.

⁷ Ministry of Justice press release, 3 August 2007.

⁸ Statistics from the CML website www.cml.org.uk

seems to be confirmed by research by the CML that found that the rate of mortgage arrears in the sub-prime sector was almost four times higher and possessions ten times higher than amongst mainstream lenders.⁹

- 1.11 To gain a fuller picture on the lenders responsible for the increase in mortgage possession actions, we analysed cases listed in the court diary for Possession Claims Online (PCOL) for mortgage possession hearings in January 2007 in 23 county courts where bureaux operated court advice desks. The table below shows the results for the 10 lenders with the most possession actions for which market share data was available. The left hand column for each firm shows the total number of possession actions listed in the survey, and the right hand column shows how this would change if they all had an equal market share. This table clearly demonstrates that sub-prime lenders are taking possession actions that are disproportionate to their market share.

Possession actions from the PCOL survey normalised for market share for the 10 lenders with the most possession actions¹⁰

Lender	Actual number of possession claims	Number of possession claims normalised for market share
GE Money (all subsidiaries)	165	1,178
Halifax	125	59
Kensington Mortgages	112	1,018
Southern Pacific Mortgages Ltd	106	1,325
Abbey plc	94	97
GMAC-RFC Ltd	92	383
Northern Rock plc	84	102
Mortgage Express	51	255
Preferred Mortgages	39	975
Cheltenham & Gloucester plc	39	43

- 1.12 So why are sub-prime lenders responsible for so many of the possession actions we are currently seeing? The industry response to this question is that they are lending to borrowers who are more likely to default on their mortgage payments.¹¹ However, CAB evidence in this report will show how the lending and arrears management practices of sub-prime lenders seem to be a key factor in the extent and severity of the mortgage arrears problems experienced by CAB clients.
- 1.13 CAB evidence also suggests that many of the borrowers seeking help were from lower income households. To inform our research, we conducted a snapshot survey of 234 new CAB clients who sought advice about mortgage

⁹ *Housing Finance*, CML, July 2007.

¹⁰ Source: claimants in 1,487 mortgage possession hearings in January 2007 listed in the 23 county courts whose CAB court desk advisers were interviewed for this report. The information was obtained via the PCOL online court diary. Market gross share statistics from CML relate to 2005.

¹¹ *Housing Finance*, CML, November 2006.

and secured loan arrears in September 2006 from 65 bureaux in England and Wales. The survey found that:

- The average net monthly household income of survey respondents was £1,296, compared to the UK average of £1,920.¹²
- At the time of seeking advice, 35 per cent of survey respondents had incomes below the UK poverty line, compared to 10 per cent of all UK homeowners with a mortgage.¹³ By way of comparison we estimate that around 37.5 per cent of all households seeking CAB advice on mortgage arrears in 2006/07 had incomes below the UK poverty line. So the survey is roughly representative of the wider population of CAB mortgage arrears clients.
- Twenty per cent were reliant on means-tested benefits and 24 per cent had their incomes topped up with tax credits.
- The average net monthly household income for survey respondents who were working or self-employed was £1,457.
- Sixteen per cent of the survey respondents were lone parents compared to 7 per cent of UK households.¹⁴ We estimate that around 18.5 per cent of all CAB mortgage arrears clients in 2006/07 were lone parents.
- Fifteen per cent of the borrowers in the survey said that they had bought their home under the right to buy or right to acquire schemes.
- The average estimated value of the respondents' homes was £153,000, which is only 75 per cent of the average UK house price.
- The average size of loans taken out for home purchase by survey respondents was also lower than the average figure for all home purchases in the UK.
- Nearly 70 per cent of the respondents said that they also had outstanding unsecured debt in amounts ranging from a few pounds to £127,000. Amongst these the average owed was around £22,000 and 10 per cent had unsecured debts of £50,000 or over.

1.14 The evidence presented suggests that CAB clients seeking mortgage and secured loans tend to have very low incomes at the time they seek advice, but also that they may have lower than average incomes at the time when they bought their house. We have also seen that a large proportion of these borrowers have unsecured debt in addition to their mortgage and secured loan commitments. This strengthens our view that the rise in mortgage and secured loan problems that bureaux are seeing is concentrated among low income and credit impaired borrowers. We believe that this highlights the vital need for effective safety nets when circumstances change.

1.15 The main message of this report is that sustainable homeownership is a challenge for many low income households, and this challenge is compounded by the nature of the sub-prime credit market that has developed partly in response to their aspirations for homeownership. While recent government policy has concentrated on purchase price, CAB evidence suggests that this is

¹² *Households below average income*, Department for Work and Pensions (DWP), 2005/06.

¹³ *ibid*

¹⁴ *Social Trends 37*, Office for National Statistics, 2007.

not the sole or even main factor in the arrears problems we are currently seeing. Rather it is the effectiveness of safety nets, the court system and regulation of lenders that are essential for sustainable homeownership for people on lower incomes. All these elements have to work as a whole if the problems presented in this report are to be properly addressed. Above all we believe that this requires better coordination of government policy.

About this report

1.16 This report is based on:

- One thousand two hundred evidence reports from 360 Citizens Advice Bureaux in England and Wales over the period September 2005 to August 2007.
- In-depth semi-structured interviews with 16 CAB clients with mortgage or secured loan arrears problems.
- Twenty three semi-structured interviews with CAB advisers working on mortgage possession desks.
- A short survey of 55 CAB mortgage possession desks in June 2007 to gain further information about some of the outcomes of mortgage possession hearings.

1.17 Chapter 2 examines how people take out mortgages and secured loans and lending practices. Chapter 3 looks at arrears management policies and practices and the extent to which these are part of the solution or part of the problem. Chapter 4 concerns court action for possession and other judicial threats to the home and Chapter 5 examines the adequacy of current safety nets designed to prevent this. Chapter 6 concludes on the lessons for sustainable homeownership.

2. Risk and affordability

- 2.1 Entering into homeownership involves risks as well as potential benefits. For most people, their mortgage will be the largest financial commitment of their lives. In addition utilising wealth stored up in housing might well mean taking out further secured loans. Every credit agreement involves an inherent risk that the borrower will default on their repayment obligation as a result of circumstances not wholly or even partially within their control. But the size of mortgage and some secured loan agreements and the lenders' right to take possession of the property mean the consequences of this can be very severe. Significant costs, homelessness or even bankruptcy are possible outcomes for borrowers who fall into financial difficulties.
- 2.2 This chapter is about how this risk is understood by lenders and borrowers. For homeownership to be sustainable it is important that borrowers properly understand both the nature of the risk they are taking on and key features of any mortgage or secured loan they take out. But our evidence shows that borrowers can enter into such agreements with very little understanding of either the terms of the mortgage or of their vulnerability to default. Such borrowers are heavily reliant on the advice from lenders and intermediaries on the suitability and affordability of mortgage and secured loans. But in too many of the arrears cases seen by the CAB service, this advice has been poor and, in some cases, the assessment of affordability has been wholly inadequate.

Deciding on a loan

- 2.3 First charge mortgages taken out on or after 31 October 2004 are regulated by the FSA who require lenders and intermediaries to comply with both high level principles and a rulebook covering business practices: the *Mortgage Conduct of Business* rules (MCOB). Recent research by the FSA on the effectiveness of the MCOB rules suggests that the majority of mortgage borrowers are making informed decisions about the product that they take out.¹⁵ The FSA found that more than three quarters of consumers had shopped around for a mortgage and consumers were able to use the key *facts* illustrations provided by lenders under the MCOB rules to help them compare mortgage products and understand the risks involved. For these reasons, Citizens Advice supports the pre-contractual information requirements in the FSA mortgage rules.
- 2.4 However, CAB evidence shows that many of the people seeking advice on arrears problems have neither shopped around nor made independent use of pre contractual information from different lenders in the way described above. Some of the borrowers we interviewed for this report told us how their own strategies for choosing a mortgage or secured loan had been cut short by their impaired credit status.

¹⁵ *Mortgage Effectiveness Review*, stage 1 report, FSA, 2006.

“What I did was to go to a high street lender - that was the initial plan. But we were rejected from the main high street lenders; because of a little bit of previous. So then it was a case of looking elsewhere. We looked through the local press, and I saw this company and I got in contact with them and, of course, they said ‘sure no problem, we can sort your problems out for you’.”

Client N

‘When you speak to [high street lender], they say, ‘we won’t help you because you’re high risk, but we’ll give you to another company that takes on higher-risk applicants’, and then you end up in trouble. But they’re part owners of these companies. You’re asking them for advice – where do you go, what do you do?’

Client E

2.5 Other evidence suggests that there is a significant proportion of consumers that start out with little or no understanding of even the most fundamental aspects of a mortgage or secured loan agreement. For instance in a survey conducted for Citizens Advice by GfK NOP in August 2006, 11 per cent of respondents said that they thought a secured loan was one where your home was safe if you fell behind with the payments and a further 10 per cent thought it was a loan where the borrower could choose to pay as little or as much as they liked each month.¹⁶ This is highlighted further by CAB evidence showing borrowers who had entered into secured loan agreements without properly understanding the implications of default.

A CAB in Wiltshire reported that a woman only realised that she had a secured loan when she sought advice about problems paying it. She told the CAB that she already had some small unsecured loans with a company who told her that if she and her partner were house owners they would be able to have a larger loan of £15,000. They were given eight days to decide if they wanted it, but were not sent a copy of the loan agreement during this time. They were then called into the company’s office to sign the papers which they did. They did not seem to have realised what they were signing even though the agreement stated clearly that the loan was secured on their home.

A CAB in south east Wales reported that a couple with multiple non-priority debts took out a secured consolidation loan for £49,000 with a company recommended by a friend. At the time, they were entirely dependent on benefit income. Within six months of taking out the loan, they were failing to meet the repayments. They had no idea of the implications of a secured loan.

2.6 In common with many of the cases reported by bureaux, it is hard to see how these borrowers could be said to have made an informed decision. Instead

¹⁶ The survey was conducted amongst a representative sample of 2,057 adults aged 18+ in Great Britain by GfK NOP for Citizens Advice. The survey was conducted between 3 and 8 August 2006 and conducted face-to-face.

they have relied heavily on the choices made by lenders or intermediaries as to whether a product is suitable for them or not. A number of the CAB clients that we interviewed for this report described how they had simply trusted that they were being given good advice.

“Well, my solicitor chose [a mortgage lender] he said they were a good company, so I used them because he advised me to. I just signed when the solicitor asked me to sign.”

Client M

“I took their word because it was their recommendation. I trusted them; I went in with my eyes closed.”

Client Q

“I went to a mortgage broker and they sorted [a mortgage lender] out for me. They said that that was the best one, and it looked like a good one, to tell you the truth. It was reasonable interest and at a fixed rate, so I just took that one. I don't think they offered me any others.”

Client B

- 2.7 Of course, relying on advice from lenders and intermediaries is not necessarily a bad thing, if the advice is good. However CAB evidence suggests that this reliance becomes a problem if borrowers cannot judge how well that advice really meets their needs and circumstances. Poor advice may only become apparent much later as borrowers reflect upon what went wrong:

“What they said was, ‘Out of all the packages, these people are the best suited for you.’ They were the only people at the time we were getting any response from, so I went with them. What I believe is that I was put into that position through my own naivety as much as anything else. If I knew then what I know now, I wouldn't have ventured into it at all.”

Client N

- 2.8 The potential for mis-selling where consumers lack the experience or capacity to properly assess information about financial products is not a new concern. For instance, the FSA has stated that the complexity of financial products and the relatively low level of consumers' financial capability creates an information imbalance that may mean consumers cannot make informed decisions or exercise much influence on the way that lenders and intermediaries behave.¹⁷
- 2.9 These concerns have led the FSA to develop the *Treating Customers Fairly* (TCF) initiative that requires firms to demonstrate that they are meeting six key fairness outcomes in the way that they deal with consumers. However the FSA have also said that, ‘so far we have seen little evidence that firms' work on TCF is translating into improved outcomes for retail consumers’.¹⁸ Firms

¹⁷ *Treating customers fairly: progress and next steps*, FSA, 2004.

¹⁸ *Treating customers fairly: measuring outcomes*, FSA, 2007.

have therefore been given to the end of 2008 to demonstrate that they are consistently treating their customers fairly.

- 2.10 In the meantime CAB evidence shows how this information imbalance still results in some borrowers being advised to enter into mortgage or secured loan agreements that appear to be wholly unsuitable for their needs and circumstances:

A CAB in Northamptonshire reported that an unemployed lone parent aged 22 had been sold an unusual mortgage which was a tracker linked to the US Libor rate by a broker. The payments had increased from £300 to £800 per month as US interest rates had risen. Unable to pay, the client had been forced to move out and had moved back with her parents. Selling her home would trigger mortgage redemption penalties of £11,000. The CAB commented that this was a high risk mortgage for a borrower in her situation.

A CAB in Lincolnshire reported that an elderly woman with debt problems took out a loan via a broker who advertises nationally for £37,000 at an interest rate of 9.8 per cent. This was to clear a mortgage from a high street lender of £30,000 at an interest rate of 5.5 per cent. The additional money she used to clear some smaller debts and spent £1,000 on Christmas presents. The client was frail and somewhat confused.

A CAB in Kent saw a 70 year old man who had taken out a mortgage three years earlier. He said that he wanted to pay off some debts and thought he would take some equity from his property to do this. So he approached a lender who granted him a £50,000 mortgage over 25 years on an interest only basis. The initial payments were £200 per month but these increased to over £300 per month and he started finding it hard to manage. The man had not fully understood the implications of this mortgage product. He had thought that he was buying into an equity release scheme, which, in the event of his death, would allow his wife to stay in the property until she died. He later found out this was not the case and told the CAB that he had not slept properly since because of the worry.

- 2.11 Here it is also important to point out that poor advice is not necessarily confined to borrowers with limited experience of financial matters. For instance, one of the CAB clients we interviewed for this report had been in business for many years and had taken out a large mortgage when he was 67 to fund his business. The loan was arranged through a broker with a sub-prime lender even though the client had no obvious credit difficulties. The same broker arranged two further remortgages within the next six months even though the client was starting to show signs of financial difficulty. He ended up with a £359,000 mortgage repayable over 25 years when he would be 103. His lender took him to court for possession. He commented that:

“I remember the judge asking the lender, ‘Why on earth did you lend that money to [the client]? Why did you lend that sort of money when he was 67 years old? It dumbfounds me. You’ve put [the client] in a position that he can’t afford, pushing up all the interest. It was only to your benefit to push him past the limit’, that’s what he actually said. It wasn’t my fault entirely, but I trusted people.”

Client Q

2.12 This highlights how even people with considerable experience of financial affairs may have a poor appreciation of the risks involved with mortgages and secured loan products. This is not to say that they have behaved irrationally or have not tried to seek both information and advice from sources they trust. However, as the cases above show, these sources are not always reliable. As a result we believe that the balance of responsibility has to remain with lenders and intermediaries for the foreseeable future.

Responsible lending

2.13 Perhaps the most severe form of mis-selling arises where borrowers are granted a mortgage or secured loan that they could not afford to repay from the very outset. The potential for detriment is such that both lenders and intermediaries are subject to *responsible lending* rules that require them to verify that borrowers can afford the contractual loan repayments.

2.14 Chapter 11 of MCOB is specifically concerned with responsible lending. Its purpose is to ensure that ‘...customers should not be exploited by firms that lend in circumstances where they are self-evidently unable to repay through income and yet have no alternative means of repayment’.¹⁹ Key responsibilities for lenders and brokers include:

- Before entering into or extending a mortgage, firms must demonstrate that they have taken account of a borrower’s ability to pay. Lenders must also make a record of how they did this and retain it for one year. However firms are allowed to rely on borrowers’ self-certification of income where this is deemed to be appropriate.
- Lenders must have and operate in accordance with a written policy that sets out the factors it will take into account in assessing a borrower’s ability to repay.
- Where a borrower is given a recommendation on a particular mortgage product, the firm is also required to establish the suitability of that product.

2.15 Yet despite these *responsible lending* rules, bureaux continue to see cases where even a brief investigation into key aspects of the borrowers’ circumstances would have alerted the lender to problems with the affordability of the loan. In some of these cases the borrowers either relied wholly or mainly on benefit income or had had such low incomes from employment that the burden of loan repayments would be impossible to maintain for very long

¹⁹ MCOB 11.2.1G.

A 54 year old man visited a West Midlands CAB about his mortgage arrears. He had been offered a mortgage of £91,000 around two years earlier while he was unable to work for medical reasons and in receipt of income support. The mortgage was from a sub-prime lender and he was paying a higher rate of interest because he was a risk. He fell behind with the repayments due to his circumstances and was taken to court for repossession by his lender.

A CAB in County Durham saw a 41 year old woman who was married with three children aged 17, 14 and 9. Her household lived off one wage, child benefit and child tax credit, totalling £1,278 per month. The woman said that she had not looked for a mortgage but was contacted by the lender and offered a mortgage of £53,000 to buy their local authority home. They were unable to afford the mortgage and had borrowed to keep up with the repayments. The woman said she had county court judgments and liability orders for unpaid council tax and bailiffs had visited her home on numerous occasions.

A CAB in west Yorkshire saw a couple both aged 72 who had income from state retirement pension and a small personal pension totalling £1,000 per month. When they were 71, they were given a 20 year mortgage but became stretched financially as their expenditure exceeded their income by £200 per month. They fell into arrears and their lender started court action for possession.

Self-certification

- 2.16 CAB evidence also raises a particular concern about the assessment of affordability through a process known as *self-certification* where potential borrowers are able to provide income details with little proof or independent verification. Where a mortgage is regulated by the FSA, the MCOB rules allow for this in *appropriate* cases. These include situations where proof of income would be difficult to obtain, the borrower is on a deadline, or where the borrower is an existing customer with a previous good payment record.²⁰ While this seems to provide for some reasonable flexibility, FSA rules also make it clear that in relying on a borrower's self-certification of income firms must have regard to the borrower's interests and have no reasonable grounds for doubting the information provided.²¹
- 2.17 Self-certification has given a poor indication of a borrower's ability to afford a loan in a number of cases seen by bureaux. Worryingly, in some of these cases it seems that the borrower has deliberately mis-stated information as a result of prompting by a lender or broker.

A CAB in Surrey saw a 75 year old man who had had a stroke and was in receipt of state retirement pension and disability living allowance. He

²⁰ MCOB 11.3.3G.

²¹ MCOB11.3.2R, but see also FSA feedback of the relationship between self-certification mortgages and the suitability rules for advised sales in MCOB 4.7.

had been sold a mortgage by brokers but had not been able to afford the repayments and the property was repossessed. He is now being pursued for a shortfall debt of £18,000. The mortgage application was completed by his daughter who was advised by the broker to falsify information by stating his occupation as an antique dealer.

A CAB in Lincolnshire saw a 42 year old woman who lived with her partner and two dependants. Her income was £800 per month and her partner had an income of about the same. She had been previously granted a mortgage of £160,000 and a secured loan of £33,000 by the same lender on a self-certification basis. At the time of application she had an income of £29,000 but for that year alone. They were unable to keep up with the payments and came to the bureau after being evicted from their home earlier that morning.

- 2.18 Not all of the loans cited above would have been explicitly covered by rules on the use of self certification. But more generally they suggest that the way that some brokers and lenders are using the self-certification system is undermining the principle of responsible lending.
- 2.19 This point has been recognised to some extent in several reviews by the FSA. Qualitative research into self-certification itself found indications that some firms were not asking sufficient questions to establish a full understanding of the potential borrower's circumstances and, in a small number of cases, firms had suggested that borrowers could overstate their incomes.²² In addition, the FSA found that in over 60 per cent of cases they looked at, the broker had kept insufficient records to establish the grounds on which a product recommendation had been made. In around 10 per cent of cases there was evidence to suggest that data of the income and expenditure of loan applicants had been inflated.²³
- 2.20 While FSA research suggests that irresponsible use of self-certification is neither widespread nor regular, our concern is that it is more likely to concentrate amongst the most marginal borrowers and those under the greatest financial pressure. So while it could be argued that borrowers who collude in giving misleading information about their income are mainly responsible for default, it is hard to believe that the lenders in these cases were wholly naïve to this possibility. The sense that there is an element of a *game* going on here is captured in the comments of one of the CAB clients we interviewed, who was remortgaging to deal with possession action with his previous lender. He had unsuccessfully tried to get a loan from a high street lender but was successful in a self-certification application to a sub-prime lender. When asked whether the lender discussed his income and what he was able to afford he said:

“Yes. Basically I told a story, but I think also they knew it, because if you're in this much trouble when you're changing your mortgage and

²² *The sale of self-certification mortgages – mystery shopping results*. FSA, 2005.

²³ See FSA briefing note *Sub-prime lenders, 2005* at www.fsa.gov.uk

you say you're earning 'this' there is a fair amount of responsibility that I should share, but the lender must also take a certain amount of responsibility, and they don't..."

Client E

2.21 Lax application of the self-certification rules and an unwillingness by lenders to look behind the information supplied by borrowers makes it easier for people in desperate financial difficulties or with low levels of financial capability to borrow irresponsibly. **With regard specifically to self-certification Citizens Advice believes that the MCOB rules could be tightened up in a number of respects without losing the necessary element of flexibility that self-certification provides:**

- **Better specification of the circumstances where self-certification will be taken to meet the requirement of MCOB 11.3.1 R (1). Lenders or intermediaries should be required to do more to demonstrate that they are not using self-certification to avoid the responsible lending rules.**
- **Firms should be required to do more to demonstrate how they have attempted to verify self-certification information.**
- **Firms should require potential self-certification borrowers to complete a budget of financial statement, not as a verification tool but as a self-guide to affordability. This might help some borrowers to at least make a better-informed decision.**
- **Self-certification should not be used where any part of the loan is for debt consolidation or where the loan replaces another mortgage or secured loan in arrears.**

Affordability over time

2.22 In other cases mortgages had been granted to borrowers who may have been able to afford the loan when it was taken out, but fell into difficulties fairly shortly afterwards for reasons that should have been foreseen by a lender or intermediary. For instance, in some cases borrowers had taken out a mortgage in the period immediately before retiring; a life event clearly associated with changing levels of income:

A CAB in Berkshire saw a recently retired man who was in receipt of state retirement pension and pension credit. He had been granted a 20 year mortgage for £135,000 18 months earlier by a lender who knew his age and that he was approaching retirement. He fell into arrears and the lender applied to the court for possession.

2.23 Borrowers can also get into difficulties where their monthly repayment increases as a result of a term in the mortgage agreement. Most notably our evidence shows borrowers getting into difficulties when a fixed rate or discounted period comes to an end. Sub-prime mortgage products commonly include a discounted period at the start of the loan where the interest rate will be several percentage points lower than a rate applying for the remainder of the life of the agreement. So after a period ranging from six months to two

years in the cases we have seen, the contractual monthly payment can increase sharply.

- 2.24 The mortgage agreement should provide information explaining that the monthly repayments are likely to increase when the interest rate jumps to a higher level at the end of the discount period. However CAB evidence highlights how borrowers have struggled to understand how the *jump to* rates in their mortgage agreements would increase their mortgage costs.

“We found that the payment of our mortgage had risen 12 months earlier than we thought it was going to. It went from £464 to £570. We couldn’t afford it.”

Client J

“I didn’t look at the small print properly, because at the end of the two year term which coincided with our problem time as well, our discounted rate went up to nine per cent. This meant that I had an absolutely massive increase in the monthly repayment.”

Client N

- 2.25 This experience seems to be repeated in a number of CAB evidence reports.

An elderly couple living on their pension visited a Surrey CAB after having accumulated mortgage arrears of more than £8,000. They took a mortgage with a sub-prime lender several years before, but fell into arrears when the interest rate rose from 5.5 per cent to 8.2 per cent. This increased their payment to £1,838 per month whilst their total income was a little over £2,000 per month.

A Nottinghamshire CAB saw a client who had taken out a sub-prime mortgage via a broker in December 2004 but had got into arrears when interest rate rose from 7 per cent to 10 per cent. The client said he discovered after he had signed the paperwork that the figure for his wife’s earnings had been increased by broker.

A client with mortgage arrears totalling £4,500 visited a Devon CAB after receiving a letter from their lender’s solicitors starting possession proceedings. The client had taken out a sub-prime mortgage via a broker. The original repayment was of £750 per month which was affordable, but this had risen to nearly £1,200 per month with an interest rate of 10.5 per cent.

- 2.26 Responsible lending guidance from the FSA clearly states that lenders must consider whether the borrower will still be able to afford the mortgage after any discount period ends.²⁴ Our concern is not only that lenders have failed to apply this guidance in some cases but that this failure has enticed borrowers into loan agreements under a false sense of affordability.

²⁴ MCOB 13.3.5G (2a).

How do borrowers understand affordability?

2.27 Our evidence has shown that lenders may not make sufficient efforts to assess how well borrowers can afford the loans being offered. Of course, the counter argument is that borrowers have to take responsibility for this themselves, which we would agree with. Indeed our experience of dealing with debt problems is that people generally enter into loan agreements in the belief that they can afford the repayments. However, given evidence of limited financial capability and reliance on advice from lenders or intermediaries, many borrowers seen by bureaux may not fully appreciate the risks of default on a mortgage until it is too late.

2.28 Borrowers might not have a particularly good idea of what will actually prove to be affordable over time. What looks affordable on paper might not prove to be so when other ongoing or intermediate expenditure is taken into account over the longer term. Some of the CAB clients we spoke to put this in the following terms:

“We spoke to people who did the mortgages and things and they lay down some figures which sound fantastic, but once the mortgage has come through they don’t actually tell you that life and building insurance is separate, and after the first year it goes up. I feel like I walked into it completely blind.”

Client A

“I think people should seriously think about taking on a mortgage. Really look at the pros and the cons. Do a list of for and against and whether you can afford it over the next 20 odd years. At the end of the day if you can’t pay it, you get into debt. I’m stuck in the middle and can’t see anyway out. It’s very hard living through this situation and I don’t really want to live to be quite honest.”

Client M

2.29 Perhaps this goes some way to explaining a clear pattern that emerged from the snapshot survey of CAB clients in September 2006. In this survey 66 per cent of all the loans in arrears had been taken out on or after 1 January 2003 and over a quarter (28 per cent) had been taken out since the start of 2005. Just over five per cent of the loans in arrears were taken out in 2006, making them less than nine months old when the borrower fell into arrears. Borrowers seem to be far more vulnerable to arrears problems in the early years of a loan. To a large extent this might reflect how people may struggle to adjust to the burden of meeting regular mortgage payments and how they might over-estimate their ability to do this. CAB evidence suggests that the models used by lenders to assess affordability and the advice that borrowers receive from intermediaries on this are not currently addressing this.

Responsible lending and secured loans

2.30 Vulnerability to default is also likely to be both heightened and longer lasting where borrowers have extended their credit commitments by remortgaging or

taking on additional secured loans. One court desk adviser we spoke to highlighted this as a significant factor in the serious arrears cases they had been dealing with.

“I’ve seen quite a lot of people who have re-mortgaged in the last three or four years, usually to pay off unsecured debt, and the payments have been larger than they can afford. It is quite often where there are two people working as well, so it’s not because their circumstances have changed. It was never really watertight enough that they could actually afford the payments. It was OK as long as everything went fine, but as soon as large household bills, car packing up or something like that happened, then everything goes into meltdown.”

A Buckinghamshire CAB

- 2.31 Around a third of the CAB clients in the survey who were working or self employed and who had a total monthly income of more than £1,500 had combined mortgage and secured loan repayments that were more than half their disposable income and around one in 12 had repayments that represented 70 per cent or more of their net income. In contrast, a Fitch Ratings study on how the UK sub-prime market assesses affordability calculated a median mortgage debt to net income ratio of just over 39 per cent.²⁵
- 2.32 We are particularly concerned about the role of secured loans or *second charge* lending in the build up of some of the arrears problems that bureaux have been dealing with. Around a third of the loans reported by respondents to the September 2006 were second loans, around one in five taken out with a lender that was not the main mortgage lender and so clearly secured by a second charge.
- 2.33 Loans secured by a second or subsequent charge are outside FSA regulation. If the amount of credit granted is £25,000 or less, the secured loan will be regulated by the Consumer Credit Act 1974. At present a second charge loan greater than £25,000 is effectively unregulated. To put this in perspective, around 20 per cent of the second charge loans in the CAB client survey were above the current Consumer Credit Act limit, and the largest was £73,000 – as much as some first charge loans regulated by the FSA. Citizens Advice therefore welcomes the forthcoming changes to consumer credit legislation that will bring virtually all new second charge secured loans taken out after April 2008 into regulation. However this will not be retrospective for existing loans above the current limit.
- 2.34 But while the Consumer Credit Act provides borrowers with a number of powerful rights and protections, it does not provide a framework of responsible lending requirements comparable to the FSA MCOB rules. The consumer credit regulator, the OFT, has published guidance that touches upon responsible lending in the sale of credit agreements, particularly where these are sold to *non-status* borrowers but these have not been updated for

²⁵ *Assessing affordability in the UK non-conforming residential mortgage market*, Fitch Ratings, 2006.

ten years.²⁶ In addition Section 29(2) of the Consumer Credit Act 2006 introduces the concept of *irresponsible lending* as an unfair business practice that the OFT can consider when assessing the fitness of consumer credit licence holders. However, this will not take effect until April 2008 and we are currently waiting for further guidance from the OFT on how irresponsible lending will be defined.

- 2.35 In the meantime CAB evidence shows that some borrowers are entering into secured loan agreements that seem wholly unaffordable from the outset:

A CAB in Somerset saw a 44 year old man who was married with three children. He took out a secured loan for debt consolidation and the combined payments for this and their first charge mortgage amounted to 70 per cent of their income. They had been incurring further debt to keep up with the secured loan repayments.

A CAB in Bedfordshire saw a 51 year old single man who had bought his house jointly with his mother in 1993. His problems started in 2004 when she died. He continued paying the interest only mortgage of £107,000 alone, then took out a second mortgage of £71,000 and then took out an unsecured loan. The mortgage and secured loan payments alone formed nearly 80 per cent of his net income. The client told the CAB that he thought that with the house in its current condition was only worth about £140,000. The CAB adviser looked at all the options with the client, but had to tell him that he was going to lose his house.

- 2.36 The evidence above shows how topping up secured lending, particularly where this is taken out to clear other debt can lead to borrowers losing control over their ability to meet their housing costs. These cases highlight how many of the arrears problems that bureaux are currently seeing are rooted in poor lending decisions by lenders granting additional secured loans. Indeed around 15 per cent of the reasons for arrears problems given by the respondents to our snapshot survey raised this sense of becoming overcommitted. For example:

“As soon as I got a mortgage, I got letter after letter from sub-prime lenders, about one a week. It started off, ‘We’ll give you £3,000’, then it was £5,000, then they were sending us blank cheques saying, ‘We’ll give you anything up to £25,000’. Both of us were saying, ‘Oh, we can afford this’. Now we’re £100,000 in debt and we’ve lost our jobs.”

Client L

- 2.37 Poor second charge lending decisions can also lead to both arrears problems and negative equity; meaning that the borrower cannot trade out of an unaffordable loan.

A CAB in Leicestershire reported that a couple with numerous debts had secured borrowing totalling £156,000 (a first mortgage and three

²⁶ See for instance *Consumer Credit Licences: guidance for holders and applicants*, 2003 and *Non-Status Lending: Guidelines for lenders and brokers*, 1997, both published by the OFT and available to download from www.of.gov.uk

secured loans). The property had recently been valued at £120,000. They were in negative equity because one of the secured lenders lent them more than the property was worth. After receiving money advice from the bureau the clients petitioned for bankruptcy.

A CAB in Yorkshire reported that a couple had a first charge mortgage of £59,000 with a sub-prime lender and a secured loan of £68,000. Two years ago, when the secured loan was taken out, the lender had valued the house at £91,000. At the time of seeking advice, the maximum valuation of the clients' home was £93,000. The clients had received an offer on the house of £88,000 but could not sell as they had no means of paying the £39,000 negative equity. The clients were stuck with a house they could not afford but could not sell. They were considering bankruptcy as the only way out.

A CAB in south east Wales reported that a couple with a disabled child were persuaded to take out a £50,000 second mortgage by a door-to-door salesman. This wiped out any equity in the property, and increased their mortgage repayments to £1,300 per month. However their total monthly income was only £1,500 per month. They could not afford the mortgage payments and soon fell into arrears.

- 2.38 CAB evidence suggests that the current regulatory framework on responsible lending of secured loans is failing. The OFT non-status lending guidance is now 11 years old and the market has changed substantially since it was first published. However, the OFT has announced plans to produce guidance for the credit market to identify practices that they consider to be irresponsible lending.²⁷ At the time of writing, no such guidance has been published. As nearly all second charge secured lending to consumers will be included in the Consumer Credit Act regime from April 2008 there is a crucial opportunity for the OFT to update its guidance and bring lending practices under control. **Therefore Citizens Advice recommends that the OFT prioritise producing guidance for consumer credit licence holders on unfair business practices in secured lending. This guidance needs to be accompanied with a compliance and monitoring strategy if it is to have any effect.** The lack of such a strategy has been a major weakness with the existing non-status lending guidance.

²⁷ *Consumer Credit Licensing, general guidance for licensees and applicants – draft guidance on fitness and requirements consultation*, OFT, 2007.

Responsible lending and right to buy mortgages

- 2.39 The themes we have described above are all particularly prevalent in CAB evidence on people who have taken out a mortgage in order to exercise their right to buy their council or housing association home. The borrowers are often in receipt of persistent low incomes, have little knowledge of financial products and are often also vulnerable because of their age, state of mental health, physical disability, literacy or language difficulties. Given these circumstances one might expect lenders and intermediaries to take extra care to check that any mortgage is affordable and suitable for the potential borrowers' needs and circumstances. However, in some cases seen by bureaux, it is hard to see any evidence of any such checks being made at all.

A CAB in south London saw a 71 year old single man whose first language was not English. He had been living in a one bedroom council flat since 1999 and said he had been managing well on state retirement pension, a small Merchant Navy pension, and benefits until he exercised his right to buy. In 2004 he was approached on his doorstep by an agent for a mortgage lender, and persuaded to borrow £75,000 over 20 years to buy his council flat at the age of 68. He had apparently received no independent advice, and there was no attempt to check that he could afford to pay the mortgage. His total monthly income was £520 and the mortgage payments were £455 per month, nearly 90 per cent of his income. The man was also persuaded to borrow £15,000 over and above the discounted cost of the property. When this ran out, he got into arrears and was subsequently evicted.

A CAB in Bedfordshire saw a 42 year old woman who had been in receipt of disability living allowance and income support for some years. She exercised the right to buy her council house using a £98,000 interest only mortgage arranged by a broker and taken out with a sub-prime lender. The interest rate was set at nine per cent and the monthly payment was consequently around £735. Although she received some help towards the mortgage payments from income support she still had to find around £400 per month from benefit meant for living expenses. This seemed unsustainable over the longer term. She was unlikely to be able to work in the future and also had no way of paying off the capital owed at the end of the mortgage.

- 2.40 In other cases reported by bureaux, it appears that lenders or intermediaries had actively encouraged borrowers to enter into unaffordable mortgages through poor advice. This includes cases where intermediaries appear to have either prompted borrowers to give false information on mortgage applications or have submitted false information apparently without the borrowers' knowledge.

A CAB in Staffordshire saw a couple with poor basic skills. A neighbour had told them about buying their housing association house and took them to see a mortgage broker to discuss this. The husband told the

CAB that the broker asked them a lot of questions and asked to provide evidence of their income. He said that they had told the broker that his wife had not worked for over 30 years and were surprised when their CAB adviser pointed out that the key facts document prepared by the broker stated that his wife was a cleaner. The purchase price of the property was £49,000, but they also had debts and county court judgments totalling £13,600. These were consolidated into the mortgage proposal that came to £64,750 including fees and legal costs. The couple were told by the broker that their monthly mortgage payment would be around £400. However they subsequently received a letter from the mortgage lender saying that the payment would be £780 per month. They returned to the broker to query this but were told it was correct. But by this time they had set things in motion and did not want to change their minds. The sale was completed some time later and virtually straight away the couple ran into difficulties paying. As a result they also defaulted on their council tax bill and borrowed money to repay this. Their cooker broke and they took out a small loan to replace it. They took out further secured loans that they used to try to meet their outgoings. When the couple finally realised that their situation was unsustainable, they went back to the broker to ask for help and were shouted at. The wife recently tried to commit suicide because of their current situation.

A CAB in Yorkshire saw a 47 year old man who had severe mental health problems. He had previously been a local authority tenant, but had exercised his right to buy after being visited by a doorstep canvasser. At the time he was in receipt of incapacity benefit and disability living allowance but was advised by the mortgage broker to apply as 'self employed'. He agreed to this at the time but he was not in a fit state of mind. Some months after completion of the sale the mortgage interest rate increased. The man said that he thought that a discounted period must have ended, but this had not been made clear to him at the outset. He was unable to keep up with the repayment and the lender took court action for possession. He faced the prospect of homelessness and a residual debt.

- 2.41 These cases suggest that neither FSA rules nor the Approved Lending Institution scheme established under section 156 of the Housing Act 1985 protects consumers against bad advice from intermediaries. As many of the *right to buy* problems that bureaux see relate to sub-prime lenders that channel their products wholly or predominantly through intermediaries, this is a matter of particular concern.
- 2.42 We believe that this may mean looking at whether FSA rules should treat *right to buy* lending as a high risk sector requiring additional safeguards. It also means looking at the wider advice needs of potential *right to buy* borrowers, including both generic financial advice on mortgage and other products and advice on broader areas such as how a change in tenure status might affect entitlement for benefits. The following cases show the possible importance of these points.

A CAB in south west Wales saw a 60 year old woman who, with her partner, had bought their council house. They had responsibility for bringing up their two grand children and their sole income was benefits. Prior to the granting of the mortgage, they were in receipt of full housing benefit, but the level of help available from income support to assist with monthly mortgage interest repayments was capped. The lender had apparently taken no account of this. The couple were sold an interest only mortgage without any repayment vehicle. Even the repayments for the interest only element were beyond their means. They had little experience of financial products and the woman had limited literacy skills. They did not realise that they had an interest only mortgage until several months into the transaction.

A CAB in east London saw an elderly man who had bought his property from the local authority on the right to buy scheme. He told the CAB that neither he nor his wife understood that they would not be entitled to housing benefit once they had bought the property. He said that if they had known this, they would not have bought the property. They had lived there for 40 years and did not want it taken away from them if they could not afford the mortgage.

Conclusions and recommendations

- 2.43 In this chapter, we have highlighted how choice of mortgages and secured loans is constrained by the capacity of consumers and by the practices of people they trust and rely on. In particular, CAB evidence shows that lenders and intermediaries have not paid enough attention to the needs and circumstances of borrowers even where the relevant information was readily available. Consequently borrowers were sold unaffordable mortgage or secured loan products in a manner that could be described as irresponsible lending.
- 2.44 If this was the extent of the problems we are seeing with the assessment of affordability then a package of measures to improve and coordinate existing regulatory safeguards would probably be sufficient to address most of our concerns. Indeed we believe that the worst of the irresponsible lending cases bureaux have been reporting could be effectively headed off if three broad reforms were put in place.
- A unified selling regime that covered both mortgages and secured loans.
 - A more proactive compliance strategy by regulators focusing on the highest risk areas.
 - Tighter restrictions on the ability of lenders to enforce loans that have been granted irresponsibly (which we will consider in chapter four).

A unified selling regime that covered both mortgages and secured loans

- 2.45 Even after the 2006 reforms, Consumer Credit Act regulated loans are still subject to a less rigorous selling regime than mortgages regulated by the

FSA. Given the size of some of the second charge lending reported in this chapter the logic of such a legislative divide seems both outdated and arbitrary. Indeed in terms of risk, even a small second charge secured loan can lead to court action for possession. In the CAB client survey seven borrowers reported that one of their lenders had taken possession action for second charge secured loans for less than £10,000.

- 2.46 This divide in the way credit agreements are regulated is not a new concern and was recently discussed by government and industry stakeholders in the wake of the 2005 Hampton report into regulatory efficiency. This questioned whether the consumer credit functions of the OFT should be passed to the FSA.²⁸ There was no general consensus that this would bring benefits to either consumers or business and so the idea was not taken further. **However Citizens Advice recommends that HM Treasury and the Department for Business, Enterprise and Regulatory Reform (BERR) should review the case for taking all secured lending into a unified selling regulatory regime that takes the best from the existing FSA and OFT jurisdictions.**

A more proactive compliance strategy by regulators focusing on high risk areas

- 2.47 Creating a unified regulatory regime will take some time, so in the short term, further action is needed by both regulators. **Citizens Advice recommends that the FSA and OFT should prepare and publish a joint strategy aimed at tackling irresponsible lending practices in the mortgage and secured loan markets as a priority.**
- 2.48 One of the attractions of the FSA regulatory regime is its detailed rules in key areas of potential detriment. However the FSA has published plans to move to more principles-based regulation.²⁹ **Citizens Advice therefore urges the FSA to consider carefully how any move from a rules-based to a principles based regulatory approach might affect the quality of lending decisions in the market.** CAB evidence suggests that the current provisions contained in MCOB 11 (and indeed MCOB 4.7.6.R) are currently being either breached or poorly applied in some cases. We would therefore be concerned if lenders were given more flexibility to interpret how responsible lending provisions should be applied. **Instead we recommend that the FSA should, as a priority, commit additional resources to monitoring lenders' and intermediaries' compliance with MCOB responsible lending and advice requirements. The FSA should also ensure that monitoring is backed up by a determined policy of enforcement as an effective deterrent to further bad practice.**
- 2.49 Research by the CML highlights how lenders currently have the flexibility to employ a variety of methods to assess affordability.³⁰ Some rely predominately on credit scoring models, others on debt to income models,

²⁸ *Reducing Administrative Burdens: effective inspection and enforcement* (the Hampton Review), HM Treasury, 2005.

²⁹ *Principles-based regulation, focussing on the outcomes that matter*, FSA, 2007.

³⁰ *UK mortgage underwriting*, CML, 2006.

and others on income multiple models. Certainly it seems that automated assessment is increasingly replacing more hands on underwriting in the industry. But the evidence presented above suggests that these methods are failing to protect borrowers on a systematic basis. We would therefore argue that responsible lending needs to move on, with the FSA and OFT taking a much more proactive and prescriptive role in identifying best practices and encouraging all lenders to adopt these.

Specific rules and safeguards for right to buy lending

- 2.50 Citizens Advice believes that right to buy lending is a sector of the mortgage market that can involve particularly vulnerable consumers and which carries a particularly high risk of consumer detriment. Equally the discount on market price that people exercising their right to buy are entitled to represents a large public subsidy for some homeowners. Currently Section 156 of the Housing Act 1985 affords a lender with approved lending institution status a first charge priority over a local authority's right to recover any discount if the borrower sells the property in the prescribed period following the right to buy transfer. Clearly, irresponsible practices by lenders can cause loss and detriment both to vulnerable borrowers and the public purse.
- 2.51 The approved lending institutions (ALI) scheme was designed as a safeguard against this before the advent of FSA regulation. The Department for Communities and Local Government (DCLG) recently consulted on whether this scheme should continue in its current form. It proposed that FSA authorisation should passport lenders to approved status for the purposes of s156.³¹
- 2.52 CAB evidence shows that the current ALI scheme has failed to provide any sort of safeguard against bad lending practices by firms which are already regulated and authorised by the FSA. Consequently, a firm that lends irresponsibly or manages arrears in an overly aggressive manner can find itself rewarded by a first charge over the equity created by the right to buy discount. In addition, borrowers who are repossessed or forced to sell because of arrears early in the life of their loan may face additional early settlement charges that can be as high as six per cent of the balance repaid in some sub-prime mortgage agreements. This can translate into additional charges on the borrower's (or indeed local authority's) equity of £10,000 or more.
- 2.53 We believe that right to buy lending is a high risk area and needs targeted attention by the FSA. **Citizens Advice recommends that the FSA should introduce specific rules for right to buy lenders. This must include a specific additional approval or authorisation to engage in right to buy lending for the purposes of Section 156 of the Housing Act 1985 that gives an approved lender a first charge preference over the local authority.**

³¹ *Clarifying the right to buy rules*, DCLG, 2007.

- 2.54 **Citizens Advice recommends that this first charge priority should be conditional on the quality of lending and arrears management practices at the discretion of the court in any proceedings to enforce possession during the five year period set out in Section 155 Housing Act 1985.**

The need for good advice

- 2.55 This chapter has also highlighted a number of failures in the delivery of advice on mortgage and secured loan products. In many of the cases reported by bureaux, borrowers were given poor advice by a broker that resulted in them entering into a wholly unaffordable agreement. Evidence of such advice being given to low income borrowers exercising their right to buy is particularly worrying. Because around 60 per cent of mortgages are now sold via an intermediary rather than directly through the lender and nearly all sub-prime and self-certificated loans are sold in this way, a key priority for the FSA and the OFT should be improving the regulation of mortgage and secured loan intermediaries.³²
- 2.56 However we should also make it perfectly clear that we have no reason to believe that most advice given by mortgage and secured loan intermediaries is anything other than a high quality, impartial and professional service. But CAB evidence on mortgage arrears problems also highlights that many borrowers have entered into mortgage or secured loan markets before they were ready or properly confident to do so. This means it can be difficult for consumers to tell good advice from bad until it is too late. Citizens Advice would welcome the opportunity to work more closely with the mortgage and secured loan intermediary sector to find ways to better equip borrowers to understand the risks and benefits associated with secured credit and to be in a better position to properly understand and interrogate the advice they might receive from a broker.
- 2.57 However, it is not just about mortgage advice. CAB evidence shows that lower income consumers may have very complex needs. Their aspirations to build up assets, gain financial security and increase their choices are the same as anyone else. But their ability to meet these choices can be severely budget constrained. In practical terms this may mean not just 'solving' the consumer's problem by finding the only sub-prime lender who will have them, but considering alternative asset building strategies. This may also mean considering how financial assets are dealt with in the benefits system.
- 2.58 With little experience of financial products and a high vulnerability to debt, some borrowers need access to advice and support to help them weigh up options, understand the benefits and costs of home ownership (as well as whether similar benefits can be achieved in other ways), interpret and decide on mortgage and other financial products and navigate the home buying process. This means ensuring that potential borrowers can access *generic financial advice* to develop a wider understanding of their financial needs before they actually enter into the market place for a right to buy mortgage.

³² Intermediary Mortgage Lenders Association (IMLA), press release, 9 October 2007.

- 2.59 Citizens Advice believes that this means ensuring that lower income consumers can access to a full range of holistic advice on all their financial and other welfare needs. It is here that the debate turns to building consumers' financial capability. Citizens Advice is engaged in a strategy of building local capacity to deliver financial capability and generic financial advice through bringing together a range of service providers to ensure that low income consumers are getting the range of advice and support that they need.
- 2.60 For homeownership amongst lower income borrowers to be viable and sustainable, regulators, government and the financial services industry should consider a strategy for advice that meets the wider needs of these borrowers. **Citizens Advice recommends that government strategies for both financial capability and financial inclusion currently under development take into account the needs of low income homeowners.**
- 2.61 **Citizens Advice believes that the DCLG has a key role in local authorities with sufficient resources and guidance to promote financial capability in their communities. More specifically, local authorities must ensure that tenants with the right to buy are enabled to make properly informed decisions about entering into homeownership.** This means support on wider money matters and generic financial advice to enable them to confidently enter the mortgage market.
- 2.62 The next chapter will look at the problems experienced by borrowers when these risks materialise and they fall into mortgage or secured loan arrears.

3. Arrears and arrears management

3.1 It should be obvious by now that the majority of mortgage or secured loan problems that bureaux deal with are about the problems that borrowers have meeting repayments. It is therefore vital to examine how lenders deal with mortgage or secured loan arrears problems. In this chapter we will examine CAB evidence on arrears management practices and question whether these practices tend to help borrowers or simply add to their problems.

Citizens Advice's key principles for good arrears management

3.2 In many respects, mortgage and secured loan debts raise broadly similar issues to the rest of the 1.7 million debt problems dealt with by the CAB service in 2006/07. So we can start by introducing some key general principles for good arrears management practice that we believe lenders (or any agents to whom they outsource arrears administration) should adhere to:

- Good arrears management starts with minimising the credit risks that borrowers face from the outset on the loan.
- Understand that your debt may be just one of a complicated set of related problems experienced by the borrower. A better solution might be available, but it might require patience and listening, and the borrower might require independent advice.
- Financial difficulties might be temporary in the context of the loan term – are you allowing the borrower enough time to recover?
- Do not unnecessarily increase the costs of debt.
- Do not take court action or otherwise enforce debt when a reasonable negotiated settlement is possible.

3.3 Failure to follow principles such as these is likely to seriously undermine sustainable homeownership and to hit the most vulnerable borrowers particularly hard. Indeed it is difficult to appreciate just how hard borrowers can find the stress, uncertainty and sense of powerlessness that can accompany the threat of losing their home. Some of the CAB clients we interviewed for this report gave us an insight as to how the arrears problems affected their health and wider well-being:

“You can't give them what you don't have, can you? It's horrible - it's one of the worst things we've ever experienced.”

Client D

“It's driven my wife to the ends of despair. It's brought me to the point where I'm now on medication for depression.”

Client N

“I cried on losing my house...I was totally gutted. Why? Because I keep thinking I've failed.”

Client K

“I’m fortunate that just my hair fell out. There’s a lot of people who feel totally suicidal, day in, day out.”

Client E

An overview of regulation of mortgage and secured loan arrears management practices

- 3.4 There are also two sets of regulation for mortgage and secured loan arrears practices – the FSA for first charge mortgages, and the OFT for second charge mortgages subject to the CCA limit.
- 3.5 The FSA rules flow from a series of high-level principles that the firms must have regard to in the way they conduct their business. Perhaps most relevant for arrears management is principle six which requires firms to ‘pay due regard to the interests of their customers and treat them fairly’. This suggests that firms should balance their own interests against the interests of their customers by exercising forbearance when dealing with borrowers in arrears.
- 3.6 This expectation is amplified by Chapter 13 of the FSA’s MCOB rules that provides a series of procedural and substantive safeguards on the conduct of lenders. Rule 13.3.1 (2) requires firms to ‘put in place and operate in accordance with a written policy and procedures’ to ensure that they comply with the duty to treat customers in arrears fairly. Guidance flowing from this requires lenders to:
- make reasonable efforts to come to agreement with the borrower as to how and over what period arrears might be repaid
 - liaise with a third party advice agency if the customer makes arrangements for this
 - not unreasonably refuse a request from the customer to change the due payment date or method of payment
 - repossess the property only when all other reasonable attempts to resolve the position have failed.³³
- 3.7 Regulation of arrears practices by the OFT also flows from the high level requirement for lenders (or third party collectors) to be fit to hold a consumer credit licence under section 25 of the Consumer Credit Act 1974. Evidence of business practices that are unfair, deceitful or oppressive should bring into question fitness to hold a licence. The OFT has periodically published both general and sector specific guidance for licence holders to set out both practices it considers to be unfair and, in some cases, good practice standards. The 1997 guidelines for lenders and brokers involved in secured non-status lending touched upon arrears management practices amongst other issues.³⁴ This told lenders that they must deal with borrowers in arrears ‘sympathetically and positively’, but without spelling out in detail what this means in practice. The guidance does state that lenders should ‘not seek to repossess the borrower’s property except as a last resort and also warns against harassment through

³³ MCOB 13.3.2E.

³⁴ *Non-Status Lending: Guidelines for lenders and brokers*, OFT, 1997.

excessive calls or correspondence. Although these safeguards are rather vague, if they were to be read together with the OFT's excellent and comprehensive 2003 *Debt Collection Guidance*, they might provide a framework capable of holding lenders to account.

- 3.8 The OFT guidelines also make it clear that evidence of unfair business practices may lead them to question the fitness of the licence holder even when these have arisen in connection with unregulated credit business. In contrast, the FSA's MCOB rules only apply to regulated mortgage contracts, and so practices connected to mortgages taken out before November 2004 will not be covered.

Unwillingness to look for reasonable negotiated settlements

- 3.9 A prominent trend in CAB evidence on mortgage arrears problems is a lack of willingness by lenders to accept the offers and requests that borrowers make to try and resolve the situation. In some of these cases, borrowers have made what appear to be reasonable offers which lenders have refused. Instead they choose to take court action for possession.

A CAB in Leicestershire saw a 38 year old woman who had two children aged six and nine years. Her husband earned £220 a week and the woman earned £300 a month from part time work. Her husband had been in and out of work with back problems and their income fell as a result, leaving them unable to maintain the full monthly mortgage repayments. By the time he returned to work, they had arrears equivalent to five months' payments. As their income had improved, they were able to offer to pay an extra £50 a month but this was refused. Their lender wanted the arrears paid back in 12 months and initiated a claim for possession.

A CAB in the West Midlands advised a lone parent whose income ranged between £1,000 and £1,500 per month. She had been in financial difficulties since splitting up with her husband and her father's death and she was not receiving any maintenance for her children. She had outstanding mortgage arrears of £2,610 and her mortgage lender wanted her to pay this back within six months. When she could not do this the lender took possession action.

- 3.10 In this last case the bureau argued that the lender was acting unfairly because the law allows borrowers of mortgages or secured loans not regulated by the Consumer Credit Act 1974 to pay back the arrears over a 'reasonable period'.³⁵ This is defined in case law as up to the remaining lifetime of the mortgage.³⁶ As mortgages and secured loans are long term products, it is reasonable to let borrowers repay arrears over an extended period, as long as this is what is needed and granting this time does not seriously weaken the lender's position.

³⁵ Section 36 Administration of Justice Act 1970 as amended by Section 8 Administration of Justice Act 1973.

³⁶ *Cheltenham & Gloucester Building Society v Norgan*, 1996, 1 All ER 449.

Of course, the respective lenders in these cases would have been well aware of both the legal position and the requirements of MCOB 13, but still pursued court action with the attendant additional costs and stress to the borrowers.

- 3.11 In other cases reported by bureaux, lenders have taken court action for relatively small amounts of arrears. They seem to have no interest in trying to come to an agreement with borrowers in financial difficulties, even where these had followed the standard advice to tell the lender about their problem early on.

A CAB in Cleveland saw a couple after one of them became ill and as a consequence lost their job. They went to sign on for Jobseekers Allowance but there were some delays. During this time they missed two monthly payments on their mortgage. When payments resumed, they paid £150 extra towards the arrears that had built up. The client had, on the CAB's advice, attempted to negotiate a payment plan within weeks of missing the first payment. However after numerous letters and telephone calls, the lender refused to negotiate any payment plan whatsoever and insisted that the full arrears were paid forthwith and went ahead and issued possession proceedings. There was equity in the property and the couple had a previously good payment history.

A CAB in Derbyshire reported the case of a couple who were taken to court by their lender when they only had two months arrears on their mortgage and then their lender took them to court. Although they were paying the normal monthly mortgage repayment they were unable to make a payment towards the arrears for three months whilst council tax arrears were being collected via an attachment of earnings order. Despite the couple explaining their situation, the lender refused to give them any time and proceeded to court action anyway.

A CAB in Surrey saw a 38 year old man whose business got into difficulties. As a result he missed some of his mortgage payments, but had less than three months arrears. He was able to restart his business and his wife was also working and had started her own business. They resumed mortgage repayments and were confident that they could pay off all the arrears in six months. In spite of this the lender sought repossession of the property.

- 3.12 The survey of CAB clients also found evidence of lenders taking court action on relatively low levels of arrears. Over three quarters of the loans reported in the survey were in arrears. In over a third of the loans the lender had started possession action and a half of all the possession actions were in respect of loans that were five or fewer months in arrears. While no lenders had taken action where arrears represented less than two months payments, court proceedings had started in 18 per cent of loans reported as being two months in arrears and a third of loans reported as being three months in arrears. Of course the lenders may have had very good reasons for taking possession action in these cases, but the evidence above suggests that some lenders are too quick to take possession action.

- 3.13 Some of the CAB clients that we interviewed for the report also told us that they had tried to negotiate affordable arrears payments, but had found lenders to be unhelpful and unwilling to listen.

“Well, the girl I spoke to said, ‘pay whatever you can and we’ll see what we can do. But I can’t accept the payment offer that you’ve made. It’s outside the boundaries I can work with’. The problem with some of these larger companies is that they don’t empower their staff enough to go, ‘Yeah, ok’. We did pay off what we could but it wasn’t within the amount they wanted, so they took us to court.”

Client F

“We were having some difficulties trying to negotiate with the mortgage company. They weren’t listening to me and they weren’t being sympathetic to the position we were in. All the time they were saying the same old thing, ‘We are happy to help’, but they weren’t.”

Client N

- 3.14 Some of the CAB advisers we interviewed reported similar experiences:

“What seems to be occurring is that sub-prime lenders are using possession action as the first resort, despite FSA regulation saying the opposite. When borrowers are trying to make repayment arrangements, they can’t get through to anyone in a position to make decisions on their offer.”

A CAB in the south west of England

A CAB in north east Wales reported that they were unable to contact a sub-prime lender to discuss repayment of mortgage arrears. The CAB reported that when they phoned the company by telephone, they were held in a queue which was never answered and automatically terminated after a set time. This included the direct contact lines, operator assisted contact line and all available contact numbers. When eventually an answer service was reached, no action was taken on the message. This made it extremely difficult to discuss any details with the lender and avoid possession proceedings for their client.

Other requests for help

- 3.15 It is not just the level and duration of arrears repayments where borrowers find lenders to be inflexible and unwilling to help. Guidance from the FSA quoted above states that lenders should not reasonably refuse a request to change the date or method of payment. The OFT non-status guidelines also suggest that regulated secured credit agreements should give borrowers the contractual right to request a change of payment date. Yet CAB evidence highlights cases where lenders have turned down these requests to the borrower’s detriment:

A CAB in east Yorkshire reported that their client had got behind with mortgage payments due to unemployment. She managed to negotiate repayments of £60 each month towards the arrears along with normal

mortgage payments. The payments were due on the 31st of each month as per the original mortgage agreement. When the client got a new job she asked her lender if they could change the mortgage payment date to the 1st of each month as this was her new payday. The lender refused. The client started to make payments on the 1st of the month anyway using her debit card as there was not enough money in her bank account on the 31st to cover mortgage payments. The lender took possession proceedings and added £40 each month interest charges because payments were being made by debit card and not direct debit.

- 3.16 We were told something similar in one of the CAB client interviews. The couple told us that they had also tried to get their lender to alter the due payment date and had also been turned down. They point to this as an important milestone of their escalating arrears problem.

“We asked them several times, ‘Can you change the date we pay our mortgage to when our pension goes into the bank?’ They said no. Four or five times we asked that, but they wouldn’t do it. From then it just escalated.”

Client J

- 3.17 Another CAB client told us how he had fallen into difficulties following a serious accident at work. He contacted his lender to see if they could give him some flexibility with payments following the failure of the payment protection policy he had taken out to cover his mortgage payments.

“I explained the situation to them, and sent them letters from the medical people. I asked them, ‘Can you make some arrangement for us to pay just the interest only?’ They wrote back and said the interest only is about three quarters of the payment anyway. They weren’t prepared to help us any other way. We had to try and make those payments which we couldn’t. They eventually took us to court.”

Client H

- 3.18 FSA guidance also tells firms that in trying to find alternatives to taking possession of the property they may wish to make any of a number of specified changes to the mortgage contract if the customer agrees to this.³⁷ This includes extending the term of the mortgage, changing a repayment mortgage to interest only, deferring payments or capitalising outstanding arrears. These practices will be familiar to money advisers who worked through the 1990s mortgage possession crisis as forbearance tools that may assist borrowers through periods of acute payment difficulty, though perhaps at a greater long term cost. As such, these options need serious consideration and explanation in light of the borrower’s present and future circumstances. For these reasons the guidance makes clear that lenders should seek the borrowers’ agreement to such a change. But CAB evidence suggests that when borrowers ask lenders to consider these options, they are often dismissed out of hand:

³⁷ MCOB 13.3.4 G interpreting 13.3.2 E(1) (a).

A Surrey CAB reported that a woman had mortgage arrears following loss of job due to ill health. She had difficulty getting another job in the short term and arrears stand in excess of £4,000. She had 19 years left to run on a £83,000 repayment mortgage, but her home was valued in excess of £280,000. In the light of £200,000 equity, the client asked their lender to capitalise the arrears. The company refused, saying it was not their policy.

A CAB in Hertfordshire saw a 43 year-old woman whose income had reduced due to being made redundant. However she was hoping to get another job shortly afterwards and approached her lender asking for an extension to her mortgage term. The lender responded by threatening repossession and sending the woman a statement for the redemption of the mortgage including an early repayment charge of £10,500 plus a closing administration charge of £134.

- 3.19 In other cases lenders have either agreed to a borrower's requests or themselves suggested alterations, but on terms that would involve excessive extra costs to the borrower in comparison to the often-limited help they have asked for. In some of these cases it appears as if the lender is using the borrower's difficulties and the impending threat of possession action as an opportunity to write some new business.

A CAB in Hampshire saw a 58 year old man who was off work because of illness and in receipt of statutory sick pay. He hoped that he would be able to return to work, but was temporarily in financial difficulties. His mortgage had only five months left to run and he asked his lender for a payment holiday on the mortgage repayments. Instead the lender offered to reduce the payments on his mortgage by extending the period for a further seven years.

A CAB in south east Wales reported that their client got into mortgage arrears when she was unable to work due to ill health. When the woman contacted her lender, their only suggestion was to increase the term of the mortgage from 17 years to 28 years, even though she was 62 and would not repay the mortgage until she was 90. They also proposed to increase the mortgage interest rate to nine per cent and the total payable would be over £200,000. She would not have been able to afford the increased repayments on the new loan.

Default and other arrears charges

- 3.20 CAB evidence shows how lenders are also routinely adding to the costs of debt problems faced by borrowers in financial difficulties by adding a variety of administrative charges to the balance as a result of the borrower falling into arrears. Most typically, borrowers report that lenders are applying a monthly charge to mortgage balance accounts for every month that the account is in arrears.

A CAB in Bedfordshire saw a disabled woman who was a lone parent with three children on income support and disability living allowance. She had fallen into mortgage arrears following a stroke that left her unable to work and also as a result of separating from her partner. She had made an agreement with her lender on repaying the arrears and had kept to it. But she was being charged £50 per month for every month that she remained in arrears.

A CAB in Tyne & Wear saw a married woman on incapacity benefit who had been off work for two years because of back problems. She had started part time work under the government scheme to help people back into work. She had been in arrears with her mortgage and the lender had taken her to court for possession. She had already agreed to make the monthly contractual payment plus £100 per month off the arrears. But the lender continued to make charges of at least £50 per month while she was in arrears. Nearly £800 had been added to her account in charges in the previous year.

A CAB in Lancashire saw a married man who had a suspended possession order in respect of his mortgage. A statement from his lender showed that his mortgage arrears had built up to £1,500 over a six month period, but fees and charges made in respect of these arrears over the same period totalled £650. These included £75 per month for being in arrears; a £30 unpaid direct debit fee and £25 for an arrears letter or phone call.

- 3.21 This is not of course the first time that the issue of default charges on credit agreements has been raised as a matter for regulators to address. In April 2006, the OFT issued a position statement on the fairness of credit card default charges under relation to the Unfair Terms in Consumer Contract Regulations 1999.³⁸ We believe that similar questions of fairness are raised by these default charges being levied on mortgage and secured loan contracts.
- 3.22 The FSA also has regulatory responsibilities under the Unfair Terms in Consumer Contract Regulations as well as specifying in the MCOB rules that, 'A firm must ensure that ...[it] does not impose... a charge for arrears on a customer except where that charge is a reasonable estimate of the cost of the additional administration required as a result of the customer being in arrears'.³⁹
- 3.23 **Citizens Advice believes that the FSA needs to examine these mortgage default charges in respect of compliance with this MCOB rule, the Unfair Terms in Consumer Contract Regulations, and the FSA's high level principle six.**
- 3.24 **Firstly we would recommend that the FSA requires firms levying these charges to demonstrate how they are a reasonable estimate of costs in fact.** However, we do not believe that firms should be allowed to merely

³⁸ *Calculating fair default charges in credit card contracts: A statement of the OFT's position.* OFT, 2006; at www.of.gov.uk/shared_of/reports/financial_products/oft842.pdf

³⁹ MCOB 12.4.1R (1).

account for these costs on their own terms. CAB evidence shows that some lenders are levying default charges that are significantly higher than others for what must be broadly similar work. **Citizens Advice believes that the FSA should publish a position statement setting out their objective assessment of the level of charges that it would be reasonable to allow firms to make in respect of administration of accounts in default.**

- 3.25 Secondly, as well as the size of the default charges that firms are making, we are concerned as to the circumstances in which these charges are being made. The evidence above highlighted cases where default charges had been added to accounts in arrears every month, even if the borrower had already made an arrangement with either the lender or the court to pay off the arrears by instalments and had kept to this arrangement. In these circumstances we do not believe that lenders incur any extra administration costs. Yet these standard default charges continue to inflate the debt owed by borrowers as the following cases show:

A CAB in Northumberland saw a 47 year old man who had mortgage arrears. He had made an agreement to pay off the arrears at £45 per month and the lender had said they were happy with this. However the lender also told him that while the account remained one month or more in arrears then they would add £50 on to the mortgage account. The man had arrears of £2,700 which would take 60 months to clear at £45 per month. Default charges would therefore add £3,000 to the mortgage.

A CAB in Sussex saw a 57 year old disabled man who, with his partner, had been taken to court by their lender where the judge made a suspended possession order on repayment of the current monthly instalment plus £70 per month towards the arrears. The borrowers had kept up with both the mortgage payments and the payments towards the arrears. However the lender continued to charge them £50 per month for being in arrears and £15 a month for non-payment by direct debit. This meant that the arrears were effectively reducing by only £5 per month.

- 3.26 Once again, we cannot see how the application of charges, where there is no obvious additional work for lenders to do, can be described as 'treating customers fairly'. It seems that some lenders are using these default charges as an alternative revenue stream to the detriment of borrowers who find themselves in financial difficulties. **We recommend that the FSA takes action to stop these practices as a matter of priority, by adding to MCOB additional guidance that it is unreasonable to continue to add default charges to a borrower's account where a borrower is keeping to an arrears repayment arrangement.**

Some consequences of unduly aggressive arrears management?

- 3.27 The cases cited above concentrate on the behaviour of lenders, but this raises the question as to how borrowers respond to being in arrears and, in particular, to a hard line approach from lenders. We are concerned that borrowers get

drawn into developing their own arrears management strategies that may be driven by desperation and which ultimately make the borrower's position worse.

- 3.28 We have already seen evidence of people using credit cards and other unsecured credit to keep up with mortgage payments and it is also the case that borrowers may attempt to resolve problems meeting payments on a mortgage or secured loan by taking out further secured credit. Two of the CAB clients we interviewed had remortgaged to deal with arrears problems with a previous mortgage. Both ended up facing possession action by the final lenders. Their comments are both illuminating and colourful:

"I've had to mortgage the place three or four times. First it was [sub-prime lender 1] but I went to a sister company of theirs, [sub-prime lender 2]. Oh! Bad people, very bad people! I got rid of [sub-prime lender 2] just by sheer luck and went with [sub-prime lender 3], because I was going to get my house repossessed, but the day I was in court it all got transferred over to [sub-prime lender 3]. I started missing payments on the [sub-prime lender 3] mortgage just after I took it out."

Client P

"Loads of mortgage companies and finance companies keep writing to me, and you wonder where they got your name from. It's only when you become indebted to one of these companies that you start getting all this information coming in and they're not offering to help because they're offering you more money. So you feel like you're in the middle of the desert and there's a load of vultures up in a dried out old tree just looking down at you, and they're saying, 'Which one you going to choose?' I've worried and worried and worried..."

Client E

- 3.29 In some cases, the lender seemed to be more interested in getting more money out of the borrower via the early settlement figures perhaps at best delaying possession action for a short period, the consequences were considerable additional expenses, not least because the subsequent mortgages would trigger the early repayment penalties levied by the earlier lender. As the first of the clients quoted above put it:

"...it did cost me an extra six grand in interest. So I lost a lot of money when I changed over."

Client P

Arrears management: is there a mainstream/sub-prime divide?

- 3.30 The evidence presented above on lenders' unwillingness to show forbearance has been drawn from all sectors of the mortgage and secured loan market. However there is further evidence to suggest that such problems are more common with sub-prime lenders than with high street lenders.
- 3.31 For instance, the survey of CAB clients appeared to show a greater tendency for court action amongst loans in arrears owed to the sub-prime lenders than those owed to the more mainstream lenders. In the survey there were 265 mortgages or secured loans in arrears where the lender's name had been given. Of these, 105 were from lenders that we classed as mainstream and 160 were from sub-prime lenders. Court action had been taken in respect of 134 of the loans in the survey. Thirty nine per cent of the loans from mainstream lenders were subject to court action for possession compared to 56 per cent of loans from sub-prime lenders. This difference appears to be statistically significant, although it is of course sensitive to our categorisation of lenders.
- 3.32 The survey also showed that possession action was more likely to be taken on relatively new loans. Information about when the loan was taken out was given for 119 of the loans where possession action had been started by the lender. Two thirds of these loans had been taken out since 2003. Mainstream lenders accounted for 43 per cent of the possession actions reported, whereas sub-prime lenders accounted for 80 per cent of the loans in the survey.
- 3.33 CAB court desk advisers interviewed for this report said they felt that more than half of the people they were seeing in court had attempted to negotiate repayments before the hearing. When asked which lenders they thought were particularly good or particularly bad at negotiating forbearance arrangements with borrowers, most of them replied that mainstream lenders were more willing to negotiate affordable repayments with borrowers. In contrast, they felt that sub-prime lenders tended to want arrears cleared in full and were less willing to accept affordable instalments. This sense of a different, harsher attitude to dealing with borrowers in arrears is well captured in the comments of two advisers shown below.

"Nearly all of them have tried to negotiate before the hearing. A lot have succeeded with the high street lenders. And I'd have to say they're not as pushy on the whole. The problem is largely with sub-prime lenders. And a lot of the gripes I hear is 'we couldn't get through, they refused to talk to us, they say they won't accept instalments off the arrears as they want the arrears paid in full'..."

Court desk adviser from a Nottinghamshire CAB

"The ones I've had problems with would be [names of sub-prime lenders]. What makes them so bad? These are the most difficult to contact for a start and they are the ones dealing with people who have bought their council homes, or who are on low incomes. ... When you do try and get through to the lender's call centre, you are just fobbed off. I

have had lots of cases where they'll say, 'I'm not speaking to you without the client's consent'. Even when you do fax a consent, they'll still not speak to you or they'll say, 'we want x amount or we're taking them to court'. I feel that they just pick a figure out of the blue knowing full well that the client can't afford that."

Court desk adviser from a Lancashire CAB

- 3.34 Earlier on we noted how a disproportionate number of the loans in arrears in the CAB client survey were from what could be broadly described as sub-prime lenders. This is perhaps not surprising as people with impaired credit records and people on low incomes are likely to be more vulnerable to arrears problems. However the evidence presented above suggests that this finding might not be solely the result of the borrower's risk, but also because the practices of the lender seem to play an important part in the outcome of mortgage and secure loan arrears problems. It is CAB experience that sub-prime lenders are, on the whole less likely to help borrowers and more likely to take more aggressive recovery action.
- 3.35 This is not to say that all sub-prime lenders are aggressive and unhelpful all the time. For example:

A CAB in south London reported that a man who had given up work in order to care for his terminally ill wife and seriously ill son sought advice about mortgage arrears with a sub-prime lender. The family were totally dependent upon benefit and could not afford the full mortgage payments. The mortgage lender issued possession proceedings but withdrew when provided with medical evidence and agreed to suspend litigation indefinitely. The action of the mortgage lender made it possible for the client to remain in the family home and care for his wife and son without the added pressure of court action for possession and ultimately eviction.

- 3.36 Indeed one of the CAB clients we interviewed for this report who had problems with multiple debts including a mortgage, a secured loan and unsecured credit told us that it was the second change secured lender that was:

"Probably the best ones out of the lot because they said, 'Can you send us proof that you've got cancer?' So I sent them proof and they said, 'We'll give you a couple of months', so they didn't hassle me as much as the rest did."

Client B

- 3.37 Leaving to one side the way the UK credit industry managed to continually 'hassle' a man recently diagnosed with cancer, this shows that good practice can be found in the sub-prime secured loan sector and of course we would expect this to be the case. But in too many of the cases highlighted in CAB evidence good practice is glaringly absent and seemingly more so in the sub-prime sector.

Conclusions and recommendations

- 3.38 The evidence presented above shows cases where lenders have not acted to minimise the impact of financial difficulties on borrowers, and far too many cases where arrears management practices exacerbate the problems borrowers face. The current regulatory and legal safeguards seem inadequate in that they are neither preventing nor challenging repeated examples of oppressive and unfair conduct. Therefore Citizens Advice believes that improvements in the regulatory controls of lenders' conduct are needed.
- 3.39 **Again we believe that there needs to be one set of rules and guidance on arrears management practice for all mortgages and secured loans. As a step towards this, we recommend that the FSA and OFT develop a common set of rules and guidance covering arrears management practices for all mortgage and secured lenders.** The emphasis in these rules should be not just on avoiding actually taking possession but also on minimising costs to borrowers.
- 3.40 Currently MCOB 13 rules requires lenders to make 'reasonable efforts' to reach agreement on repayments and to look for alternatives to taking possession which should be reserved for the last resort. However the term 'reasonable efforts' is not defined in MCOB and the rules do not prevent lenders from taking court action for possession (rather than repossess the property) where there is a reasonable alternative. **Citizens Advice believes that MCOB rules on arrears management should make it clear that lenders should not initiate court action for possession where a reasonable and affordable agreement on repaying the arrears can be reached with the borrower.**
- 3.41 However, changes to the rules will not be effective unless lenders and their agents comply with it in spirit and letter. **Given the potential for severe consumer detriment arising from mortgage and secured loan contracts we believe that the FSA and OFT both need to develop rigorous ongoing compliance strategies to deal with arrears management practices.** This should focus on higher risk areas, but should be capable of addressing problems anywhere in the market. Both regulators should report specifically on the outcomes of this strategy on a regular basis.
- 3.42 More fundamentally, we believe that the way the lenders treat people with arrears problems needs to become a factor that consumers can take into account in their purchasing decisions. Currently there seems to be little or no commercial pressure for good arrears management practices. In fact, the opposite might well be true; with the funding arrangements of some sub-prime lenders actually providing commercial incentives to unduly harsh arrears management practices.
- 3.43 In other areas, the Government is interested in providing consumers with information that would bring back of house issues that are not directly obvious from price issues. Indeed, some sectors have already attempted to do this, such as the long term savings and insurance sector that has tried to make customer care a key issue of concern for consumers. We believe that it is time

for similar schemes to be developed for the mortgage and secured loan industry.

3.44 **As a starting point, FSA-regulated lenders should be required to publish their arrears management policies and OFT only regulated lenders should be required to develop one.** Citizens Advice believes that this is a vital part of the common set of rules for mortgage and secured loans arrears management. We believe that lenders should be required to report at least annually on how this policy has performed. There is a parallel with Housing Corporation, which now requires all housing associations to report the numbers of tenants evicted for rent arrears as well as numbers of tenants in arrears. In part this means firms demonstrating that they have done what they said they would do. However it will also be important for consumers to be able to compare between firms if good practice is to affect their purchasing decisions. **Therefore we believe that the FSA and OFT should develop measurable performance criteria on practice standards in arrears management. This should include:**

- **both positive and negative indicators to show both good and poor performance**
- **clear and striking badging systems to describe the quality of customer care in arrears management practices.**

3.45 The next chapter looks at the nature of the court proceedings, and the role of the court in monitoring arrears management practice. We also look at the remedies available for borrowers both through the court and elsewhere.

4. Losing the home

- 4.1 If no repayment arrangement can be agreed between the lender and borrower, the lender can start possession action in the county court. As we highlighted in the first chapter, there has been a recent increase in the number of county court possession claims for mortgage and secured loan arrears. Comparing the current pattern of county court action and arrears problems to the 1990s *arrears crisis* period reveals that the number of possession claims is now higher than at the back end of the 1990s crisis, but with far fewer properties being taken into possession and far fewer loans in serious arrears.⁴⁰

Arrears, court action and repossessions⁴¹

	Loans in > 3 months arrears	County court possession claims issued	Possession orders made	Properties taken into possession
1994	419,890	87,958	77,681	49,210
2006	120,500	131,551	89,857	22,700

- 4.2 We believe that this is partly due to the continued rise in house prices allowing borrowers in financial difficulties to cut their losses and sell themselves rather than let lenders take the property into possession. It has been argued that 'lenders use court action as a way of creating the disciplined payment structure necessary to get a household in arrears back on track'.⁴² However, the previous two chapters demonstrate that the root cause of the growth in possession actions is poor lending and poor arrears management in many of the cases seen by bureaux.

"When my wife and I went into court, we were thinking, 'Here we are, the only people that are there', and it was so ridiculous - there were something like 13 cases from [sub-prime lender] coming in on that same day. [Sub-prime lender] had three separate lawyers there to deal with these cases. To me, that just says, what kind of people are these?"

Client N

- 4.3 In this chapter we will look at how lenders use possession action, the costs of possession action and the remedies available to the courts. We will also look at the growth of unregulated commercial 'mortgage rescue schemes'.

⁴⁰ We chose 1994 as this is the first year for which CML data provides totals for loans greater than three months in arrears. The data series provides figures for loans in six months arrears or more in years previous to this.

⁴¹ Statistics on arrears downloaded from CML, www.cml.org.uk (table AP1). Statistics on mortgage and landlord possession actions, Department of Constitutional Affairs. May 2007.

⁴² *Repossession Risk Review January 2007*, CML.

CAB clients' experience of mortgage possession proceedings

- 4.4 Whilst there are clear procedures in place for taking possession action, CAB evidence shows is that there is a great deal of confusion and fear for borrowers going through this process. Many borrowers are frightened by the particulars of claim sent by the lender and find it difficult to comprehend:

“When the possession claim lands on the borrower’s doormat, they’re frightened and won’t look at it. It’s only when they take advice that they actually understand what it all means.”

A Lancashire CAB

- 4.5 The information contained in the particulars of claim can give borrowers the impression that there is little the court can do to let them stay in their home:

“The problem about the information is that it doesn’t say anything about what the court’s powers are. There’s no definition of a reasonable period to clear the arrears and too many people come into the court traumatised because they think they have a very short period of time... especially if they have tried to negotiate with the lender. ... Clients are always amazed when I say, ‘well at first pass, we’ll try to clear your arrears within five to seven years.’ Their reaction is, ‘good lord, I never realised that.’ ...People should be told what the range of outcomes could be in terms of making offers.”

A London CAB

“The fact is that people generally think that they aren’t going to have any say in what the order is. They think that the judge is going to agree with the lender.”

A Buckinghamshire CAB

- 4.6 Most borrowers also find the whole idea of going to court very stressful and believe the possession hearing will be like a criminal trial, whereas in fact mortgage possession hearings are very short – most taking not more than ten minutes - and take place in private with only the judge, the borrower (and their representative, if any) and the agent for the lender being present.

“When they took me to court, I was absolutely petrified because unless you’ve been in this situation before, you don’t know what to do.”

Client E

“They fear they are going to be told off for being stupid and reckless and almost as if they have committed an offence.”

A Lancashire CAB

“There’s not enough information telling them about the hearing – that it’s just them, the agent and the judge in a room.”

A Somerset CAB

- 4.7 These beliefs may adversely affect the number of borrowers who attend their hearing. In the experience of many CAB court advice desks, less than half of borrowers attend their possession hearing. This may be because they do not understand there will be help at court or that the court can reschedule arrears payments.

“Last week there were seven possession cases and only two people turned up, which is a normal experience. People don’t turn up because they don’t think they can win. They don’t realise that there are people like me who can sit down and say to the judge that they can pay so much towards the arrears on a regular basis.”

A Norfolk CAB

- 4.8 Fear of the hearing may also make borrowers vulnerable to pressure from lenders to agree to unaffordable instalments off the arrears. It appears that some lenders offer instalments with the ‘inducement’ of not having to appear in court:

A CAB in Gloucestershire reported that a couple with two children had a £15,000 secured loan. The clients failed to pay the last four instalments and the lender took court action for possession. When the clients contacted the lender, the lender offered them the option of agreeing to pay an additional £100 per month so that the arrears could be paid off in two years. The lender added that the clients would then not have to appear in court. However the clients contacted the CAB and were advised about attending court and making an offer of contractual payments and a much lower affordable offer on arrears. The CAB commented that had the clients agreed not to go to court, the court would have given a suspended possession order subject to the offer being kept. As this was an unreasonable offer, the clients would not have been able to maintain payments and would have lost their home.

“I do believe from some clients I have interviewed that some lenders (and these tend to be sub-prime lenders) will decide on an acceptable level of repayment on the mortgage arrears and then tell the borrower that if they agree to that payment then they will not lose their home and will not go to court.”

A Cheshire CAB

“I rang the lender up and said, ‘what’s this about this court thing?’ They said, ‘oh well, it’s alright. It’s just a procedure we go through, nothing will happen.’ Next thing I know I’ve got all this coming through.”

Client P

- 4.9 In contrast, the new rent pre-action protocol requires landlords to inform tenants of the date and time of any court hearing and the order applied for.

The landlord also has to advise the tenant to attend the hearing, 'as the tenant's home is at risk.'⁴³

What lenders want from the court

- 4.10 As we highlighted earlier in this chapter, lenders say they use court action to ensure that borrower pay off their arrears. However, this is called into question by the comments of the CAB court desk advisers that we interviewed for this report. Most CAB court desk advisers we interviewed said that typically it was difficult to reach an agreement with lenders' agents before the hearing because the lender's instructions to the agent were inflexible. More worryingly, 17 advisers said it was quite common for agents to insist on outright possession, rather than accept repayments off the arrears. Many of the CAB advisers said that sub-prime lenders were more likely to instruct their agents to ask for outright possession than high street lenders:

"One of the big problems we have is that the agents have no discretion. Even when they phone the lender with the offer we have worked out, the lender won't accept it. The judges hate that."

A Nottinghamshire CAB

"Agents' instructions tend to be what I call 28 days stonewall. I had one particular case where I was so aggravated by their attitude. The client had a perfectly reasonable offer I knew the court would accept. The agent said, 'no, possession in 28 days'. I asked him to ring the lender to see if they would accept and the agent refused to do so. When we got into court, I told this to the judge who ordered the agent to go out of court and ring the lender."

A Cheshire CAB

"Given that agents generally don't have any discretion, it's largely a fruitless task negotiating with them. Frankly I know I can get better out of a district judge."

A Cornwall CAB

- 4.11 What this evidence shows is that lenders' practices are at odds with both statute and case law on the circumstances when the court can grant possession and regulatory guidance from the FSA and OFT that possession should be a last resort. This is summed up in a quote from an adviser:

"One of the biggest problems I have at court is trying to convince people that the solicitor acting for the other side isn't going to get what they want, or what they ask for necessarily. People would come in and say, 'But I've just spoken to them and they say they're going to take my house away if I don't pay £300 per month.' And it's not their decision, it's the judge's decision."

A Nottinghamshire CAB

⁴³ Paragraph 13(a) of Pre-action protocol for possession claims based on rent arrears, MoJ, October 2006.

The costs of bad practice

- 4.12 The following cases show what happens when a lender uses the court to 'discipline' a borrower inappropriately, in terms of extra costs, worry and exposure to the threat of losing their home:

A CAB in Essex saw a 47 year old man who was unable to work because of ill health. He had claimed income support. As part of his benefit claim the DWP had been paying mortgage interest directly to the lender. The client had fallen into arrears, the bulk of which built up whilst he was waiting the 39 weeks it takes to qualify for help with mortgage interest. However after he had qualified for help with mortgage interest, and when arrears were around £900, the lender started court action. The mortgage was for £20,000 and he had at least £100,000 of equity. However, even with benefits help he was still struggling to pay his mortgage because the interest rate charged by the lender was higher than the one used by the DWP to calculate how much help he should receive towards his housing costs. In addition the lender had added a monthly arrears administration fee of £25 to the account balance for 13 consecutive months. The CAB helped the client negotiate with the lender for him to pay an extra £20 per fortnight on top of his benefits. This would ensure he met his full mortgage instalment whilst paying enough off the arrears to clear them within the remaining nine and a half years of the mortgage term. However the lender also said that they wanted the agreement to be endorsed by the court. At the hearing the judge made a suspended possession order for the client to pay the full instalment plus £13 per month off the arrears. The client maintained his additional payments of £20 per fortnight, which initially meant that he was paying more than the £13 per month ordered by the court. But a short while later his mortgage instalment increased from £120 to £190 per month. Although part of this increase was due to a change in interest rates, the majority was due to fees and charges of more than £1,000. The lender said that these charges would have to be paid within the year by their inclusion in the monthly mortgage instalment. Consequently the client was asked to pay another £65 per month, which he could not afford. The lender then applied to the court for an eviction warrant on the grounds that he had defaulted on the terms of the suspended possession order.

A CAB in Surrey reported that a woman fell into mortgage arrears whilst doing a nursing degree course. She advised her lender of her situation and asked whether the arrears could be capitalised. This was refused, even though her situation was likely to change within a few months when her course ended and she could start full time work. The lender initiated a court claim for possession and made the situation worse by the charges they levied. Each month, an arrears fee was charged which ranged from £35 to £50 without explanation for the difference, plus a returned direct debit fee of £35. In at least one month the arrears fee was added twice to the account. A further £434.75 for

solicitors' costs and a claim fee of £125 was added to the debt. At the time of seeking advice, the arrears stood at £3,811.36, and over £1,000 of this was charges. The client's ability to repay the arrears was greatly decreased by addition of excessive fees, increasing the possibility of repossession.

- 4.13 Far from helping these borrowers to get back on track, the lender's decision to initiate court action appears to have been both wholly unnecessary and in no small part responsible for making the debt problems worse, squeezing the borrower until their position became impossible. Here it is also worth noting that in addition to the extra costs associated with court action, any breach of the suspended possession order also allows the lender to apply for an eviction warrant without the necessity for a further court hearing. This places the emphasis on borrowers to apply to the court to suspend to operation of such a warrant. This seems an unduly heavy burden for often unrepresented borrowers, particularly when they have kept to the payment terms ordered as in the case above. CAB clients we interviewed also talked about the impact of costs:

"We've been taken to court every couple of months which adds £550 on top of your arrears. We made an arrangement with them to pay what we could manage. Then they'd take us to court with this £550 which we couldn't afford."

Client H

"If they continue adding these charges and put the interest up, we won't be able to pay. We will have to go back to court and charges will be added again. The £20,000 equity in the property will just go."

Client J

- 4.14 This last comment highlights how the additional costs arising from court proceedings can hit borrowers with a 'double whammy'. Not only do the costs increase the overall mortgage debt but also there is some evidence of lenders seeking to recover court costs and related fees by increasing the amount of the monthly contractual payment.
- 4.15 Mortgage contracts generally contain clauses whereby the borrower agrees to indemnify the lender against any legal costs incurred in the enforcement or recovery of arrears. Because this indemnity is contained in the mortgage terms, lenders do not routinely have to *ask for costs* in court. Instead, these are simply added to the bill. CAB court desk advisers sum up the effect as follows:

"When you take out a mortgage you agree to indemnify the lender against all litigation costs. What happens – unlike all other cases – when the judge makes the order, the issue of costs is not addressed because of this, unless you specifically raise it. As a result I feel that lenders are getting away with things."

A London CAB

“If you want to challenge the agreement itself on technical grounds then you have got to be very, very careful. They roll out a barrister from London and then the client could be liable for their costs of thousands of pounds.”

A Cheshire CAB

- 4.16 Consequently, there is currently little to prevent lenders from taking court action when a borrower falls into arrears even where such action would be objectively unnecessary. Mortgages regulated by the FSA will of course be subject to the rules on arrears management practices contained in chapter 13 of the MCOB. These require lenders to have ‘regard to the desirability of agreeing with the customer an alternative to taking possession of the property’ and to consider ‘repossessing the property only where all other reasonable attempts to resolve the position have failed.’⁴⁴ Similarly the OFT non-status lending guidance says that lenders should not seek to repossess the borrower’s property except as a last resort. This allows the lender loopholes to set the terms of what is reasonable and to apply the guidance to actually taking possession of the home, rather than taking court action. If one accepts the argument that a lender goes to court not to gain possession but to discipline the borrower’s repayments, then these MCOB provisions are robbed of a substantial part of their force.

The need for a pre-action protocol

- 4.17 Our evidence shows that currently lenders have relatively easy access to the court system to enforce possession of the homes of borrowers that fall into arrears, and that lenders may not always be paying sufficient regard to the costs and other consequences falling on borrowers as a result. Because of the obvious importance of housing as a determinant of welfare and the possibility for serious detriment arising from the threat of possession, Citizens Advice believes that lenders should only take possession action as a last resort and not as a routine response to arrears as some CAB evidence suggests.
- 4.18 However, we are not convinced that this will be achieved merely by a strengthening of regulations or guidance issued by the FSA or OFT. Certainly the current FSA rules imply that lenders should not be refusing reasonable offers of repayment, but our evidence suggests that this seems to be happening anyway. The problem is with compliance, as the regulator is always at a distance and only likely to pick up problems after they have occurred. On the other hand, the court is in a perfect position to assess whether the pre-action behaviour of the lender is in compliance with expected standards of forbearance and other practices. **Therefore Citizens Advice recommends that the MoJ establish a pre-action protocol for mortgage and secured loan possession actions.**
- 4.19 There is a precedent for this in the pre-action protocol for possession claims for rent arrears to social landlords that was introduced in October 2006. This

⁴⁴ MCOB 13.3.3E (1) (a) and (f).

was established in response to circumstances which were broadly similar to those with sub-prime mortgages and secured loans in three key aspects:

- As the Citizens Advice evidence report *Possession action: the last resort* highlighted, a rapid rise in possession actions by social landlords around the turn of the century was in part due to poor arrears management practices that encouraged possession action as a routine response in preference to other alternatives.⁴⁵
- The social tenants facing possession action were often people on low incomes. We believe that the same is true of many of the CAB clients seeking advice about mortgage arrears today, many of whom are former social tenants who had exercised the right to buy.
- Social landlords were presented with a series of incentives that tended to encourage aggressive arrears management practices. For instance, local authorities are subject to best value performance indicators that prioritised fast recovery of rent arrears over a sustainable approach to housing debt. At the same time other social landlords were arguably facing greater pressure to aggressively pursue outstanding arrears as a result of the then increasing commercialisation of their funding base. There is a parallel here with the funding arrangements used by some of the sub-prime lenders that seems to drive increasingly aggressive arrears management in the way described in chapter 3.

4.20 Given these similarities we would argue that the case for introducing a similar pre-action protocol for mortgage and secured loan arrears is strong. In addition we would note that the MoJ will have inherited the Public Service Agreement (PSA) targets of the former Department for Constitutional Affairs (DCA).⁴⁶ PSA target 5 required the DCA to achieve earlier and more proportionate resolution of legal problems and disputes without going to court. The current level of unnecessary mortgage possession claims would seem to be an important and growing example of why this target is needed. We are aware that the Civil Justice Council have already raised this with the MoJ, and now is the time to take this work forward.

4.21 **Citizens Advice believes that a pre-action protocol for mortgage possession proceedings should have the following key elements:**

- **Lenders must show that they have made genuine efforts to reach agreement with borrowers on reasonable and affordable arrears repayment before taking court action.** In deciding what is a reasonable and affordable repayment arrangement, lenders should have regard to the borrower's income and expenditure, in the context of existing case law.
- **Lenders should be required to advise borrowers on the possible sources of help with their arrears problem before taking court action.**

⁴⁵ *Possession action: the last resort?* Citizens Advice, 2003.

⁴⁶ *Departmental Report 2005/06*, DCA.

This might include alerting borrowers to the possibility of claiming under insurance or a benefits claim and must include a referral to independent money advice.

- **Lenders should be required to show forbearance rather than start court action where there is good reason to believe that repayment difficulties are likely to be temporary in nature.**
- **Courts should be empowered to strike out a possession claim or disallow costs where the lender cannot demonstrate compliance with the pre action protocol.**
- **Lenders should have to justify to the court why it is fair to pursue possession action where arrears are below six months.**

4.22 **In conjunction with the pre-action protocol, the MoJ should introduce a regime of fixed costs for possession action in the Civil Procedure rules.**

Judicial remedies and control of practices

4.23 Over the last 35 years, the percentage of UK homes which were owner-occupied has risen from just under 50 per cent to over 70 per cent. The expansion of home ownership means that more people, particularly those on lower incomes, could be exposed to the risk of arrears and repossession. However, the legislation which protects home owners with mortgage arrears from losing their home has not been updated to reflect these changes. The main piece of legislation protecting borrowers was passed in 1970, and the protections for secured loans regulated by the Consumer Credit Act were drafted in the early 1970s. We believe that these now need updating if homeownership for people on low incomes is to be expanded.

4.24 Section 36 of Administration of Justice Act 1970, as amended by section 8 of the Administration of Justice Act 1973, applies to all mortgages and secured loans unless they are Consumer Credit Act regulated agreements. The court has the discretion to make a suspended possession order which allows the borrower to stay in their home, if the borrower can both pay mortgage instalments as they fall due and clear the arrears within a 'reasonable period'. There is no definition of the term 'reasonable period' in statute, but the Court of Appeal held that when assessing a reasonable period, it was appropriate for the court to take account of the remaining term of the mortgage.⁴⁷ Case law has also developed allowing courts to make long possession orders (three or even six months) where the borrower has sufficient equity and wants time to sell the property themselves.⁴⁸

4.25 If the mortgage or secured loan is a regulated agreement, the provisions of the Consumer Credit Act 1974 takes precedence. Under this Act, the court can

⁴⁷ *Cheltenham & Gloucester Building Society v Norgan*, 1996 1 All ER 449.

⁴⁸ *Target Home Loans v Clothier*, 1994, 1 All ER 439; *National & Provincial BS v Lloyd*, 1996, 1 All ER 630 and *Bristol & West BS v Ellis*, 1997, 29 HLR 282.

make similar orders as under the Administration of Justice Acts, with one important exception – it can also make a time order to reschedule payments on a regulated agreement if ‘it is just to do so’. When making a time order, the court has the discretion to rewrite the agreement, including varying the interest rate and reducing the instalment. These powers potentially allow the borrower to reduce the repayments and extend the term of the loan, as long as their financial problems are likely to be temporary, and it is reasonable both for the borrower and the lender for repayments to be reduced.⁴⁹

- 4.26 So the protections for consumers are based on judicial discretion, taking into account the circumstances of the case. However, the interviews with court desk advisers suggest that there were differences in the way in which judges exercised this discretion, both between and within courts. Some advisers reported that some judges are willing to accept repayments of arrears over a long period and allow time to sell, while others had a more restrictive view.

“I have had cases where arrears have been accepted over a term exceeding the life of the mortgage. They have been exceptional – for example a couple not far off retirement age with plenty of equity in their property who were intending to sell it as soon as they retired and move to live near their family. The judge decided it was perfectly reasonable to suspend on that basis.”

A Cheshire CAB

“There are certain judges who will bend over backwards to accommodate the clients and some who won’t. In my view, the discretion is given in an arbitrary way.”

A London CAB

“They vary enormously. Some judges are difficult to persuade to reschedule arrears over more than five years, but I have had another judge recently who didn’t bat an eyelid to rescheduling the arrears over ten years.”

A Buckinghamshire CAB

- 4.27 Because regulated agreements are a minority of the mortgage possession cases (22 per cent of all the loans in the survey where possession action had been taken), judges may not be familiar with consumer credit legislation and case law.

“They don’t really get the consumer credit cases and when we get one, we have to lead the judge carefully through the law and what his powers are.”

A London CAB

“About four years ago time orders were a novelty because the court had never dealt with any. But since then they’ve had quite a few from me. So I get on alright with them. I remember my first application – the

⁴⁹ *Southern & District Finance v Barnes*, 1995, 27 HLR 691.

judge said, 'are you sure they can be used for secured loans?' I said, 'yes'. He looked it up in his big book and said, 'you're right'."

A Cheshire CAB

- 4.28 Worryingly, the key point here is that time orders are not a novelty, and the definitive Court of Appeal case was heard in 1995. Indeed, our report on the 1990s' mortgage arrears and repossessions crisis made exactly the same point.⁵⁰ It is as if the lessons from the 1990s have simply been forgotten. Citizens Advice believes that there is a need for better training for county court district judges on mortgages and secured loans. **We recommend that the Judicial Studies Board review the training available to district judges on mortgage and secured loan possession cases, and produce a handbook for judges on the main consumer protection rights in mortgage and secured loan agreements.** For this to be effective, the handbook should be publicly available and should include information on other relevant consumer protection legislation.
- 4.29 More generally we believe that there is a gap between the rules about market conduct set down by regulators and the issues that the court looks at in mortgage possession actions, particularly in relation to arrears management, lending decisions and default charges. In relation to the latter, one court desk adviser described what happened when she raised the issue of potentially unfair default charges with the judge,

"He said, 'well, I can't do anything because it's part of the contract. The borrowers have signed it so it's a legal document.' He agreed it sounded unfair, but he couldn't do anything."

An Essex CAB

A CAB in north east Wales reported that a woman who had recently remortgaged with a sub-prime lender was diagnosed with depression and had to stop work. Consequently she was unable to pay the full monthly mortgage repayment and her account fell into arrears. She kept the lender informed of her situation and always paid as much as she could afford. Her financial circumstances improved when she was awarded incapacity benefit and disability living allowance and she made an offer to reinstate full monthly payments plus £20 per month towards the arrears. The lender refused the client's offer and took court action for repossession. The judge accepted the client's offer of repayment. However the mortgage company was applying an arrears administration charge of £40 every month whilst the account was in arrears. The CAB felt that the charge was an unreasonable and unfair penalty which amounted to an arrears fine. If the charges continued to be applied the arrears would actually increase rather than decrease. The client asked the judge at the county court to rule on the charges but he declined, indicating that it could not be resolved in the time available for the hearing and a full hearing, lasting up to two days,

⁵⁰ *Dispossessed*, Citizens Advice, 1993.

would be required. He recommended that a better way forward would be through the Financial Ombudsman.

- 4.30 Mortgages and secured loans are now important to the majority of UK citizens. It is no longer sufficient to merely give borrowers in arrears time to pay, as we believe courts should have a central role in ensuring that borrowers are treated fairly by their lenders. The most important developments in consumer protection in the last few years has been the development of the fairness agenda. It is not clear who will ensure that this is carried out in court.
- 4.31 Citizens Advice believes that courts need to be more proactive in using unfairness legislation and market conduct rules to ensure that borrowers do not face homelessness unnecessarily. Better training and information for the judiciary will help, but further action is required. Borrowers are often unrepresented or, at best, have lay representation, but the current system of protections and remedies requires them to make separate, complex and costly actions for damages. We believe that the courts should take a more inquisitorial role, rather than the adversarial system at present.
- 4.32 There is, perhaps, an opportunity for this to be reviewed. The Law Commission are currently consulting on taking some housing disputes out of the county court and putting them in a tribunal.⁵¹ However, the Law Commission have recommended that mortgage possession cases should not be moved to a tribunal system because it would overload the system and because there would still be no jurisdiction over contractual costs. We do not believe these problems to be insurmountable, and we can see real merits in moving mortgage possession actions to a tribunal based system. **Citizens Advice believes that any tribunal for mortgage and secured loan possession actions should have wide-ranging powers and duties to look at the circumstances leading up to possession, including ruling on all relevant consumer protection rules and legislation.** This would also be likely to require a review of source legislation, where this specifies the court as the primary avenue for redress.
- 4.33 Earlier on we argued that the two regulatory regimes for mortgages and secured loans need to be brought together. This is also true for the court's powers in dealing with repossession claims. It seems unfair that a remedy available for secured loans is not available for first charge mortgages, particularly where these could be remortgages for the same purpose. **Citizens Advice believes that these features of consumer credit legislation should be carried over to apply to all mortgages and secured loans:**
- **Time orders, including the power to reopen the agreement under section 136 of the Consumer Credit Act 1974.**
 - **Unfair credit relationship type provisions to apply to FSA regulated mortgages.**

⁵¹ *Housing; proportionate dispute resolution – the role of tribunals*, Law Commission, June 2007.

Mortgage rescue and avoiding repossession

- 4.34 One of the features of the current growth in county court mortgage possession actions is the relatively low number that result in lenders taking possession, compared to previous years. We have already argued that in part this is due to more aggressive arrears management practices by sub-prime lenders, but it is also a result of increasing house prices. In the mortgage possession crisis of the early 1990s, people had declining or negative equity, but now, most borrowers in arrears might be able to buy their way out, by remortgaging or by selling the house. We decided to test this theory by asking a sample of CAB court desks how many of the clients they had advised at court in May 2007 had wanted to sell or were advised to sell their home as the best alternative to repossession. Just under one in five of clients seen at these court desks wanted to or were advised to sell their home. This is a small snapshot sample, but it might suggest that repossession figures understate the number of people losing their homes due to mortgage arrears. Indeed, many of the advisers contacted said that they thought that some of the other clients would end up selling shortly.
- 4.35 Another way of avoiding repossession might be mortgage rescue schemes. This was held out as the answer to the mortgage repossession crisis of the early 1990s. These schemes were set up between lenders and social landlords where public funding would effectively change the tenure of the property to social housing. This assumes that the borrower would not be able to sell and there was not much equity in the property.
- 4.36 In the last few years a new form of mortgage rescue has emerged from the private sector. In these sale and rent back schemes, the borrower is invited to sell their property to a private landlord at a discount to the full market price, and in return, are able to rent the property back as a tenant. The size of some of the discounts bureaux have reported suggest that some of the providers of these agreements see this as a super-profitable buy-to-let opportunity with a ready-made tenant. The concern raised by CAB evidence on these agreements is that homeowners in a financially and emotionally vulnerable situation are ending up selling their houses for much less than they are worth, as the following cases show:

A CAB in Lincolnshire reported that one of their debt clients had a mortgage and secured loan which he could not afford to pay, plus numerous other debts. He had seen an advert in the local paper for a company which offered him 75 per cent of the market value of his property for a quick cash sale, and then he can rent it back from them for three years at £450 per month. The offer was attractive to the client as so many properties were currently on the market in the area.

A CAB in Tyne & Wear reported that a woman who felt very vulnerable after the death of her husband sold her home to a home buy back company so that she could release the equity in it. The company

bought her house for £100,000, however a year earlier a similar property in the same road had been sold for £145,000.

A CAB in south London reported that a woman in mortgage arrears had been taken to court for repossession. The client found it very difficult to keep up with the terms of the suspended possession order and was signed off work with stress. Her claim on her MPPI policy was turned down. The client then saw an advert for a sale and rent back company in her local free newspaper. She received two home visits from the company's local representative and signed the agreement without receiving any advice or comparative quotes. The property was sold to the firm for £200,000, although it had been valued at £350,000. This just about paid off her mortgage and unsecured debts. In return she received a six month assured shorthold tenancy at an initial rent of £750 per month. At the end of this period, the landlord wanted to put the rent up to £1,300 per month on the grounds that the rent had been incorrectly assessed at the outset. Shortly afterwards the client was back in court facing possession for rent arrears.

- 4.37 As this case shows, homeowners entering into these agreements are paying tens of thousands of pounds for a tenancy that offers little security of tenure. The landlord can simply end the tenancy by giving two months' notice:

A CAB in the West Midlands saw a man who had sold his property for £40,000 to a sale and rent back company. The market value of the house was £140,000. Shortly afterwards the landlord served him with a notice saying that he was going to end the assured shorthold tenancy. The landlord later agreed to let the man stay on condition that he paid more rent each month.

A CAB in Staffordshire reported that a homeowner in mortgage arrears sold his property quickly at 60 per cent of its market value to a sale and rent back company on condition that he could rent it back and purchase it back from the company when his financial situation improved. The client had originally bought his council house, and so had a lot of equity in his property. But he was ill and his situation deteriorated to a point where he was unable to work and was over two months in rent arrears. The sale and lease back company sought possession of the house through the courts.

- 4.38 Even where longer term tenancy agreements are offered, the security can be worthless, as the following case shows:

A CAB in the West Midlands saw a pensioner in his 70's who had sold his home in January 2007 for £30,000 to a company on condition that he could stay on as a tenant indefinitely, although he was actually granted a six month assured shorthold tenancy agreement. The property's value was close to £100,000. He sold his house in this way because he had earlier taken out a loan secured on it that he was finding difficult to repay and was panicking that he would be evicted

due to the arrears. His wife was ill and he did not want to worry her. Some time after the sale and rent back happened, he received a letter from an insolvency practitioner explaining that the landlord's company was in receivership and informing him that he could not stay at the property. He also found out that the landlord's mortgage lender had taken possession action in the county court as the landlord had not been paying the mortgage secured on the property. The 70 year old man and his unwell wife faced homelessness as a result.

- 4.39 The strong implication in this last case is that the landlord's buy to let borrowing was probably unsustainable from the outset. It is also notable that, as the landlord's purchase was at a heavy discount to market value, the position of the lender financing this transaction would have been protected by a low loan to value and a large amount of equity. The net effect was severe detriment falling upon the original homeowner/tenant.
- 4.40 One of the attractions of the schemes for homeowners in arrears is help with paying the rent via housing benefit. However, housing benefit rules are complex, and there is evidence showing how scheme providers can overstate the rules of entitlement and the amount of benefit the new tenant will receive:

A CAB in Somerset saw a couple, one of whom had recently retired and the other was working. They were cold called by a sale and rent back company who offered to buy their house (which had been valued at £140,000) for £75,000 and then rent it back to them for £470 per month. The company representative told them that they would be better off by doing this, but his calculations overstated the amount of housing benefit they would receive as tenants, particularly as the housing benefit rules meant they would not necessarily be eligible for help with rent costs at all. Had they gone through with the agreement they would have sold their house at an undervalue of £65,000 to buy a tenancy agreement that they would not have been able to afford.

A CAB in Kent reported that a woman was in arrears with a mortgage and a secured loan following a relationship breakdown. Her ex-husband had paid the loans for a time, but was no longer doing so. The loan company had threatened possession action and the main mortgage lender was ringing her every other night. As the client was on income support and incapacity benefit, she could not afford the repayments, so she approached a sale and rent back company to help. They offered to buy her house for £150,000, although she believed her house was worth £220,000. However the client accepted the offer, so that she would not be made homeless. She was given an assured shorthold tenancy agreement, but the rent was only fixed for a year. The client had been told by the housing benefit department that she might not be entitled to either housing benefit or council tax benefit as she had deprived herself of capital in order to claim benefit.

A CAB in Tyne & Wear reported that their client had severe mental health problems, including an inability to cope with pressure following

death of her partner. She had mounting debts and in order to alleviate these debts she decided to sell her home to a company that would rent it back to her. She needed to claim housing benefit as she could not manage the rent. At no point did the company selling her the property explain to her that she might not be able to claim housing benefit for five years as she previously owned the property. Luckily, the CAB spoke to the housing benefit department and explained the client's circumstances to them and they agreed to look at the documentation prior to a claim to see if it could be accepted. As the mortgage lender had already started possession proceedings, she might be entitled under the housing benefit rules. However the company buying the property and her solicitor had not explained the potential for it to affect her housing benefit.

- 4.41 The number of companies providing these products seems to be growing, and yet there is no regulation. Whereas equity release schemes for older people and Islamic mortgages (which in many ways are similar to sale and rent back schemes) have recently been brought into FSA regulation, the legislation doing this does not appear to cover sale and rent back schemes. **Citizens Advice recommends that HM Treasury looks at this market with a view to establish a framework of regulation as a matter of urgency.** Whilst we can see these products could be suitable for some borrowers, our evidence shows that vulnerable borrowers have suffered as a result of sharp practice. **Citizens Advice recommends that the OFT investigate sale and rent back schemes with a view to enforcement using their extensive consumer protection powers.**

Conclusions

- 4.42 In this chapter we have made a number of recommendations that would substantially improve the protections available for homeowners at risk of losing their home. Citizens Advice believes that it is no longer appropriate for homeowner debt to be treated as a purely contractual matter. A home is an increasingly important source of welfare, as it is the major asset that people will accumulate during the course of their lives.
- 4.43 In the next chapter, we will look at the issue of safety nets for homeowners who fall into financial difficulties, whether these are informal, privately provided or provided by the state.

5. Safety nets

- 5.1 The previous chapters have looked at how the risk of mortgage default is assessed and how it is managed when it actually happens. In this chapter we will look at how well the risk of default is mitigated for CAB clients with mortgage or secured loans by means of informal and formal safety nets. Whilst recent policy focus on housing has been on making house purchase more affordable, the evidence from CAB clients in the survey is that purchase price did not seem to be the main cause of their arrears problems.
- 5.2 Instead, a significant proportion of CAB clients told us that their repayment problems began with a change in their circumstances that produced a sudden income shock. Other borrowers reported how a persistent low income had shown how a loan that seemed affordable in the short term might not prove to be so over a longer period. Indeed, the prevalence of fairly recent loans in arrears in the CAB client survey would seem to support this view. Another factor is that the average estimated value of the CAB clients' homes was only 75 per cent of the average house price for England and Wales as a whole.
- 5.3 This all points to a second concept of affordability as a *dynamic* problem where the initial house price is less important than the effectiveness of the safety nets available to borrowers when things start to go wrong. Indeed we would argue that the rise in arrears cases seen by bureaux and the number of possession actions suggests that dynamic affordability is the most pressing short term issue for low income homeowners. The fact that these problems have become increasingly apparent over a period of still fairly favourable conditions for borrowers also suggests that the existing system of safety nets is failing these borrowers on a systematic basis.

What's wrong with the existing system of safety nets?

- 5.4 The safety net for homeowners has never been a single coherent system, but a mixed economy of personal resources, financial services and state support through the means tested benefits system. Since the reforms to state support for homeowners in 1995, the emphasis has been on private provision as the mainstay, with state support taking a more residual role. However, as many people have observed, current safety nets may not be providing borrowers with adequate support or cover. For instance, the government's own Low Income Homeownership Task Force recommended 'the development of an enhanced safety net/mortgage insurance system that works for all home buyers, which may require enhancing the state safety net'.⁵² More recently, a research report commissioned by the DCLG highlighted how a deliberate policy of expanding home ownership could result in the appearance of many more borrowers from marginal groups that would be particularly exposed to the risk of income shock. The report concludes that, 'current safety nets in the

⁵² Recommendation 7.8 of the Low Cost Home Ownership Task Force, 2003.

UK may not be sufficient to prevent low income homeowners from changes in life circumstances'.⁵³

- 5.5 An overview of the elements of the current system is provided by Ford and Wilcox in the table below.⁵⁴ We have added forbearance into the list of short term resources.

Safety nets to support mortgage payments

Short term	Medium term	Long term
Savings Flexible mortgage resources Employee benefits <i>Forbearance</i>	Insurance → ← Means tested state benefits →	

- 5.6 As we will show in the next sections of this chapter, this only looks like a complete system by making a number of hopeful assumptions both about the resources available to borrowers and the way that borrowers, government, lenders and insurers behave. Without these assumptions, the safety net is exposed as a collection of threads and holes for borrowers to fall through. Unfortunately the experience of CAB clients with mortgage and secured loan arrears suggests that this is exactly why the safety net seems to be failing them. So what are the assumptions underpinning the different parts of the safety net described above?

Short term support: savings

- 5.7 The key assumption here is that borrowers will be able to continue to keep up with their mortgage payments in the weeks and months following a sudden decline in their income without recourse to support from the state or private insurance. Access to help with mortgage interest payments from means tested benefits (generally referred to as ISMI) usually comes after a qualifying waiting period. In addition borrowers who have taken out mortgage payment protection insurance (MPPI) might find that their policy contains an excess period at the start of the claim.
- 5.8 Research published by the then Office of the Deputy Prime Minister (ODPM) found that 90 per cent of borrowers had some short term protection in the form of savings, flexibility in their mortgage allowing underpayments or a payment holiday, or benefits provided by an employer such as contractual sick pay.⁵⁵ However, as the report points out, this leaves a minority of borrowers with no access to initial support. Our concern is that this minority is likely to be concentrated amongst the lower income and credit impaired borrowers that bureaux are currently seeing with arrears problems.

⁵³ *Social Mobility and Homeownership: A risk assessment. New Horizons Research Programme.* DCLG, 2007.

⁵⁴ *Managing risk and sustainable home ownership in the medium term: reassessing the options.* Janet Ford and Steve Wilcox; Joseph Rowntree Foundation, 2005.

⁵⁵ *Homeowners Risk and Safety Nets, Mortgage Payment Protection Insurance (MPPI) and beyond,* 2004, Office of the Deputy Prime Minister (ODPM).

- 5.9 Out of the 16 CAB clients we interviewed for this report, only one said that they had savings available to put towards the mortgage following a shock to the regular income. In contrast, others had managed by borrowing off family or friends.

“I am getting absolutely nothing. I am borrowing at the minute off family and friends.”

Client B

“We’re still up to date with the mortgage payments. My children who are working although not living at home are chipping in hoping that daddy will start this new job he’s been promised on the 1st October because it’s their inheritance as well.”

Client F

- 5.10 As this last quote suggests, loans from family and friends and likely to be fairly soft and could therefore be regarded as a form of interfamilial saving. In contrast other borrowers can only keep up with their mortgage payments by using commercial credit. For instance a recent survey by YouGov for ROOF magazine found that six per cent of households relied on credit cards to meet their mortgage or rent payments.⁵⁶ CAB clients have told a similar story:

“We only had one month’s mortgage arrears as that was the one thing we did try and stay on top of. Obviously everything else, the car, the bank loans and the credit cards, was behind.”

Client A

“That’s when it starts going pear-shaped because you can’t pay anybody. You’re robbing Paul to pay Peter one week, and somebody gets left out. Of course, then I started getting further and further into debt, my direct debit bounced, and then of course you get bank charges every time... So, my wages were going in, and just being eaten up by bank charges, so you still have got no money to pay the mortgage or anyone else.”

Client K

Short term support: flexible mortgages or inflexible lenders

- 5.11 Previous research has described the development of flexible mortgage products that allow borrowers to overpay when they can afford it to build up a buffer allowing underpayments or payment holidays in the event of short term drops in income.⁵⁷ It has been argued that flexibility by lenders might become an integral part of the mortgage safety net and it is easy to see how this could be particularly useful for borrowers with either variable incomes or fairly low fixed incomes where occasional expenditure shocks could otherwise trigger

⁵⁶ Shelter press release, 17 October 2007.

⁵⁷ Ford, J., Quilgars, D., Burrows, R., Rhodes, D., 2004, *Homeowners Risk and Safety Nets: Mortgage Payment Protection Insurance (MPPi) and beyond*, London: ODPM.

an arrears problem. This is summed up nicely by one CAB client who described her arrears problem against a background of persistent low income after her partner fell ill and the slowly spiralling indebtedness that accompanied this:

“It’s horrible, opening up your soul to somebody saying, ‘look at what a mess we’re in’. Because we’re not people that fritter money away, it’s just slipped away. Something happens and you need the boiler repaired or something happens that you just don’t have the money for. So your overdraft gets higher and higher and then OK, you’ve asked for it so they give you a bigger overdraft but you can’t pay it back and the credit card...”

Client D

- 5.12 An increasing number of lenders now offer flexible mortgage options and this has even extended into some sub-prime product lines. But as the evidence presented in chapter 3 highlights, we are also seeing numerous examples where lenders, and sub-prime lenders in particular, have shown borrowers little by way of forbearance. This is worrying as forbearance is supposedly the mortgage and secured lending industry’s key contribution to the short and medium term safety net. This raises a further concern that the spread of flexible mortgages will not accompany forbearance, but might provide some lenders as an opportunity to charge an additional margin for it. It is notable that the *flexible* option carries an additional interest loading in the sub-prime products we have seen. It is hard to see how repackaging good practice as a product and selling it back to borrowers is progress and it raises questions as to what contribution some of these lenders actually make to the safety net. This is well illustrated by the comments of one CAB client who had had arrears problems with both a mainstream and sub-prime lender (that markets a flexible option):

“They don’t do suspended payments – [sub-prime lender] does not bend for anything, you can’t reduce or nothing [sic], they do not bend.”

“The best mortgage people were [mainstream lender]. Those people were fantastic. They reduced my payments, they froze the extra loan, they helped me anyway they could. I would have gladly let them repossess the house because they were that good to me. I couldn’t fault them for it, but the rest - no chance.”

Client P

- 5.13 This contrast sums up the current problems with the help available to borrowers in the short term. An assumption that people will have the resources to manage until insurance or benefit payments for housing costs are payable leaves many borrowers dependent on the goodwill of their lender not to take possession action. Yet, with CAB evidence showing how some borrowers are being taken to court for two to three months arrears, it is hard to see how these assumptions reflect the current reality.

Support for borrowers in the medium and long term

5.14 In recent years Government policy on mortgage safety nets has been to encourage borrowers to take out more private insurance, while reducing the support available from the state. The Government's response to the recommendations of the Home Ownership Task Force stated:

'The aim is to provide a safety net that provides people with help with their housing costs should they enter difficulties, but that needs to be balanced against the need for people to act responsibly and be able in the short to medium term to help themselves either through work or insurance.'⁵⁸

5.15 This response does not dismiss concerns over the current safety net, but neither does it address them. While it seems reasonable to think that the costs of the safety net should be shared by the parties that gain from this rather than merely falling upon the taxpayer, we believe that there are outstanding concerns about the way the cost burden of the safety net is shared between borrowers, the state, lenders and insurers. But the priority must be to ensure that the arrangements are effective in practice and do not price the most vulnerable borrowers out of the safety net.

5.16 We would argue that the current safety net is only likely to work well if three key assumptions hold true against the experience of the majority of actual real life borrowers. These assumptions are:

- most borrowers do in fact take insurance against the risk of defaulting of their mortgage payments
- this insurance does in fact provide effective cover for all borrowers at a price within reach of low income borrowers in particular
- the *residual* state component of the safety net does in fact cover the borrowers whose risk is not adequately picked up by insurance.

5.17 Here lies the policy problem that government has to address. It is not just the articulation of the private and state components that is important but how each part actually works for borrowers. In the next sections we assess how well the insurance and state means tested benefit elements of the safety net work for CAB clients.

Insurance take-up

5.18 A significant limitation with the current safety net is the large number of borrowers who remain uninsured against the risk of mortgage default. Recent research found that for 40 per cent of borrowers who had taken out mortgages since 1993 had no cover against mortgage default at all.⁵⁹ Only 16 per cent were covered for both health and unemployment risks. The best rate

⁵⁸ The Government's response to the recommendations of the Home Ownership Task Force downloaded from www.renewal.net

⁵⁹ *Homeowners Risk and Safety Nets: Mortgage Payment Protection Insurance (MPPI) and beyond*, London, ODPM, 2004.

of coverage was found to be for health cover at 37 per cent of borrowers sampled. However a large number only had critical illness (CI) cover that is designed to cover major life threatening illness, but not more common causes of incapacity for work. Indeed the Income Protection Task Force have argued that less than 40 per cent for claims for incapacity benefit would generate a payment from CI cover.⁶⁰ So the effective cover for the most common health related reasons for loss of earned income is probably rather lower than the above figure suggests. A more general cover against health risks is provided by another product known as income protection (IP) or sometimes as permanent health insurance. However the Income Protection Task Force estimates that around 60 per cent of current IP coverage is in the form of group cover provided through employers. It seems likely that lower income and more marginal employees are less likely to receive these benefits as part of their employment package.

A CAB in Yorkshire reported that a lone parent wanted MPPI in case she was off sick as she had no partner. However she was sold a policy which would only cover her for death, terminal illness or permanent disability. The client faced at least four months on a reduced income due to illness and had no way of paying the mortgage.

- 5.19 Arguably the most common and probably best known product is Mortgage Payment Protection Insurance (MPPI). In this type of insurance the benefits are directed specifically to maintaining contractual mortgage payments. MPPI policies are generally sold by mortgage lenders, although an increasing number are now sold by intermediaries (31 per cent of new policies according to CML data).⁶¹ MPPI policies can include cover against accident, sickness and unemployment (ASU) but do not always do so. Some policies may also cover other circumstances causing people to give up work, such as having to care for a sick or disabled relative.
- 5.20 So the range of risk covered is generally wider than the products described above, but the benefits are often capped to a maximum number of monthly payments in a single claim. For instance, the CML have produced a baseline specification that sets out minimum standards in the MPPI policies offered by its members. This suggests a maximum of 12 monthly payments in respect of a single period of illness/disability or unemployment. This in part explains why the insurance part of the safety net is equated with the medium term; the theory being that this strikes a balance between the cost of the policy and a length of cover suitable for most claimants.
- 5.21 This baseline was introduced following the 1995 reforms to try to standardise the quality of products available following concerns that policies were often offering variable benefits and exclusions from cover. Indeed Citizens Advice noted in 1995 that, 'CAB clients... experience fundamental problems with the content and conditions of payment protection policies themselves'.⁶² The point

⁶⁰ *The Income Protection Taskforce White Paper*, Income Protection Taskforce, 2006.

⁶¹ CML statistics on payment protection insurance

⁶² *Security at risk: CAB evidence on payment protection insurance and implications for public policy*, Citizens Advice, 1995.

to note here is that the 1995 reforms have had to struggle with the realities of extending a private safety net insurance from the outset. To address these realities the CML established the *sustainable home ownership* initiative (SUSHO) in 1997 along with the Association of British Insurers (ABI) and government departments. One of the aims of this was to increase take up of MPPI with a target of 50 per cent of borrowers covered by 2004. While the research cited earlier suggests that at least this proportion of borrowers have some sort of cover, the actual take up of MPPI itself has fallen well short of this target. CML figures suggest that take up among new mortgages reached around 27 per cent in 2004 but has declined more recently falling to 22 per cent at the end of 2006, the lowest level since 1999.⁶³

- 5.22 CAB evidence suggests that this low level of take up might be in part due to concerns that borrowers have with both the cost and quality of many of the payment protection policies on offer. Firstly, some borrowers have said that they did not take out MPPI because they could not afford the additional payments on top of the mortgage and other house related insurance.

A CAB in south west Wales saw a 45 year old man who owned his own house. He made an application for help with mortgage costs via income support but was told he would have to wait 39 weeks for payment. He told the CAB that he was very angry about the 39 week waiting period as if he was renting his property he would get housing benefit from the date he stopped working. He did not have MPPI because he was previously working on a low income and could not afford the premium together with his mortgage and other commitments. The client felt that he would have to return to work early against the advice of his GP as otherwise he would lose his home.

A CAB in Kent reported that a woman had remortgaged her house to repay debts. At that time she had a full-time job which she found very stressful and left. She then found another job, but work was sporadic, cold and dusty and affected her health. During this time she used her savings to pay her mortgage and other bills. She then went sick and received statutory sick pay, at the end of which she would get income support. However she would get no housing costs for 39 weeks. There was no mortgage payment protection as she could not afford this. The client told the CAB that she was very upset because she had worked hard all her life and now got little help.

- 5.23 Secondly there seems to be a growing belief among borrowers we have spoken to that payment protection policies often do not pay out when needed:

“We’ve had payment protection before. When my partner lost his job he wasn’t covered, only you are covered. I looked at it and you’ve basically got to be dying to be covered for your payment protection.”

Client A

⁶³ See the CML website pages on the sustainable home ownership initiative at www.cml.org.uk/cml/policy/issues/230 (downloaded May 2007). Statistics on MPPI take up are also published by the CML on line at www.cml.org.uk/cml/statistics

“I think insurance is basically a protection racket that has been legalised. I’ve got a total and utter mistrust in insurance policies because I have tried to claim on insurance policies before. I found that insurance companies write so many bits into the small print that they’ll always try and get out of it.”

Client F

5.24 CAB evidence shows that many borrowers have experienced this, due to exclusion clauses or poor administration of claims:

A CAB on Merseyside reported that a lone parent client working in a care home fell ill with depression which was being treated by her GP. Her only income was statutory sick pay and she was unable to pay her bills. She made a claim on her payment protection insurance but this was refused because she had not been treated by a consultant psychiatrist. Her mother died which added to her depression and she got deeper in debt. She returned to work and was assaulted by a resident, and had to take time off work again. She began to get letters from her creditors which rendered her unable to cope and she went into a further bout of depression, again treated by her GP. The client ended up with a suspended possession order for mortgage and secured loan arrears and owed about £13,000 to other creditors. She had also been fined for not having a TV licence, and her telephone had been disconnected. The bureau noted that their client had got deeper into debt and she had made a slower recovery from her illness than she would have done if the insurance company had paid out.

A CAB in Leicestershire reported that a man fell into mortgage arrears when he lost his job. Two months after becoming unemployed, he claimed on his MPPI policy. The insurer sent him a list of information they required which he supplied. However, they subsequently asked for further information, spinning out the settlement of his claim. The client had received notice from his lender’s solicitors that they were starting possession proceedings. Prior to losing his job, he had had no serious problem with making his mortgage payments and felt the insurance company was taking an unreasonable time dealing with his claim resulting in a real threat to his home.

5.25 Whereas the SUSHO initiative and baseline provides some quality standards for most first mortgages, there are much weaker standards for PPI sold with secured loans. Our 2005 evidence report on PPI, *Protection Racket*, highlighted the differences between the CML baseline and that produced by the Finance and Leasing Authority (FLA), a trade association which includes many secured lenders.⁶⁴ The cases below show that PPI on secured loans can be the weak link in the chain. CAB evidence more commonly describes

⁶⁴ *Protection racket: CAB evidence of the cost and effectiveness of payment protection insurance*, Citizens Advice, 2005.

blanket exclusion clauses such as bad backs and mental health on PPI sold with secured loans:

A CAB in Warwickshire reported that a married woman had been off work sick due to an accident at work, which had caused severe back pain. The client and her husband had taken out a secured loan with payment protection insurance the previous year. Although the client had spent £45 on medical certificates to support the claim, the insurers turned it down because the small print states that the insurance does not cover any period of disability relating to backache and related conditions unless there is X-ray evidence of abnormality. The client's GP would not agree to X-rays as it was not medically necessary and because the damage was muscular.

A Merseyside CAB reported that a couple were required to take out payment protection insurance when they took out a secured loan. They were not made aware that this would add another £17,000 to the loan of £27,000. When one partner had to leave his job because of panic attacks, they were told that the PPI did not cover claims for mental ill health. They were not able to sell their house, even though they had a buyer, because the lender did not think they would recoup their money. It was the PPI that was putting the clients in negative equity. As a result the couple were evicted and were now living with their respective parents, with their five year old daughter living with her mother.

- 5.26 As the last case shows, the cost of single premium PPI sold with secured loans can exacerbate the debt problem rather than solve it. Other cases show how expensive PPI on secured loans can be:

A CAB in Surrey reported that a self-employed man took out a second mortgage for £18,000 repayable over 60 months at £540 per month. At the time the client also took out PPI to cover him in case he could not work. This was a single premium of £4,000, which was added to the loan. However, he could not work for a period and got behind on his mortgage payments. He tried to claim against his PPI but was told that his PPI did not cover him because he was self-employed. The company sought to repossess his property.

A CAB in Derbyshire reported that a client was in arrears with secured loan taken out nine months earlier. The total loan was £60,000 with an additional £15,000 for PPI. With interest, the total repayable over the lifetime of the loan was £203,181. At the time of seeking advice the client was living on £15 per week food money.

A CAB in Somerset reported that a couple on a low income remortgaged to consolidate debts two years previously. The company they chose advertised on television. At the time they had taken out the loan they were very distressed and it was a relief to have a company who could solve their problems by a quick phone call. The loan was for 25 years, in both names, with the wife as the first named borrower on

the loan agreement and insurance policy. The loan was for £66,500, and the insurance premium was £16,591. The clients were under the impression that the insurance would cover the 25 year term of the loan and would cover them both for death, injury, critical illness and unemployment. However, the small print in a tiny box on the loan application stated that the cover was for five years only and only covered both clients in the event of a death. Only the wife was covered for illness and unemployment.

- 5.27 The failure of insurance as a safety net for all debts was highlighted in the Citizens Advice report, *Protection Racket*. This was the basis for a super-complaint to the OFT as CAB evidence suggested that a combination of features of the PPI market appeared to be significantly harming the interests of consumers. As a result, the payment protection market, including that for MPPI is now being investigated by the Competition Commission. We hope the Commission will come up with remedies which will address the issues of cost and content that we describe above.
- 5.28 Our evidence shows that the assumption that more borrowers will take out insurance against the risk of mortgage default because state support has reduced has not been borne out. And where borrowers have taken out cover, it has often failed them. In this respect, the 1995 reforms, and government policy since, must be regarded as failing.

State support through means tested benefits

- 5.29 The ISMI scheme provides payments of interest (but not capital) on loans for home purchase, re-mortgages for the same amount and certain home improvements that meet the conditions of the ISMI scheme rules. It is also unique in being the only direct state support to borrowers to help with repayments of a credit agreement or agreements. A recent overview of Government housing policy explains why this should be the case.

'Housing is recognised as an entitlement of all citizens. It is an important part of the right to enjoy an adequate standard of living and is essential to our well-being by providing security and comfort. Government is committed to ensuring that everyone has the opportunity to access a decent home. This is not only for the direct benefit of households, but also for guaranteeing social cohesion and better employment prospects, improved health and education and greater economic inclusion.'⁶⁵

- 5.30 The headline purpose of the ISMI scheme is therefore to maintain this *fundamental entitlement* for borrowers who have no other resources to draw upon. As a means tested benefit it will only be available to borrowers who have very low levels of income relative to an objective assessment of household need and little or no substantial savings. Its place in the current mortgage safety net is in theory to support borrowers who have either

⁶⁵ *Housing Policy: an overview*, HM Treasury and ODPM, 2005.

exhausted their entitlement to benefits under an insurance policy or who have suffered a catastrophic drop in income for reasons that are deemed as uninsurable. It is therefore very much the protector of last resort of those borrowers in the greatest need of help. So the effectiveness of the whole safety net very much rests up on the assumption that these means tested benefits will in fact pick up those borrowers not covered adequately by insurance.

5.31 The ISMI rules state that no housing costs are payable for a specific waiting period, unless the claimant is aged 60 or over or satisfies complex linking rules if they had been claiming previously. For most ISMI claimants, the waiting period is 39 weeks, a period designed to align with the end of a PPI claim. However, there is a shorter waiting period for people in the following circumstances:

- people who took out their mortgage before the 1995 ISMI reforms
- carers who meet certain other conditions
- people who have been abandoned by their partner or whose partner has died
- prisoners awaiting trial or sentence
- people whose MPPI claim was refused due to a pre-existing condition or because they were HIV positive.

5.32 These people will get no help for the first eight weeks, half their housing costs for the next 18 weeks, and will only become eligible for full housing costs after 26 weeks. The system assumes that people who have experienced uninsurable events will be able to stay in their homes because lenders will exercise forbearance. However CAB evidence has already shown that lenders do not forbear and these waiting periods are causing considerable hardship for people in often very vulnerable situations.

A CAB in Hampshire saw a 24 year old woman with a young baby whose husband committed suicide, leaving her with a mortgage and no income. Because the husband had committed suicide, the life insurance cover they had was unlikely to pay out. She could not pay her mortgage because she had no income, and even if she got income support, the long wait for help with interest payments meant that she could lose her home.

A CAB in south east Wales reported that a single man had recently claimed income support and incapacity benefit due to illness. However he would have to wait 39 weeks for help in his income support with his mortgage. The CAB commented that if he had been a tenant, he would receive housing benefit straight away. As it was, he was at risk of losing his home.

5.33 Help with mortgage interest is only available on the first £100,000 of any eligible mortgage. This restriction was introduced as a result of concerns about unemployed people getting help with large mortgages on luxury homes in the recession of the 1990s. However, since then house prices have

rocketed, and this limit is now well below the national average house price. For example:

A CAB in Yorkshire reported a lone parent with three children was struggling to pay her mortgage payment during the 39-week waiting period. However, even when the waiting period is over, her full interest payments will not be met, because her mortgage was £118,000. Making up the shortfall would place her and her family well below the poverty line. The client would therefore have to use money which was needed for her family's essential expenditure.

A CAB in Sussex reported that a single pregnant woman sought advice about the benefits she could claim when she had to give up work to have the baby. However the client had a mortgage of £120,000. She was very worried about how she would manage when she had to give up work and claim income support.

- 5.34 Another source of meanness in the system is the standard interest rate. This was brought in by the 1995 reforms to reduce administrative burdens for DWP staff. The standard was originally based on the rates charged by the top 20 building societies, and subsequently changed to the Bank of England Base Rate plus 1.85 per cent. As at 12 August 2007 this is 7.33 per cent. However, this policy takes no account of the fact that most CAB clients seeking advice about mortgage arrears borrowed from sub-prime lenders who charge rates significantly above this standard rate.
- 5.35 The table below shows estimated interest rates, based on the lenders' product information for both self-certificated and right to buy medium adverse mortgages at 75 per cent loan to value (LTV), unless stated, at the reversionary rate. We used this rather the discounted rate as this is the reversionary rate that CAB clients are often paying when they come for advice (see chapter 2). These are rough calculations to illustrate the difference between the interest rates charged by these lenders and the ISMI standard rate, and should not be taken as any kind of product comparison.

A comparison of the standard interest rate for ISMI and interest rate charged by some sub-prime lenders

Name of lender	Rate charged for self certification	Rate charged for right to buy	Difference between rate charged and ISMI standard rate
Kensington Mortgages ⁶⁶	8.45%	8.45%	1.12% for both
SPML ⁶⁷	8.65%	8.65%	[#] 1.32% for both
Preferred Mortgages ⁶⁸	8.81%	9.01%	1.48% for the former, 1.68% for the latter
Platform Home Loans ⁶⁹	9.32%	9.12%	1.99% for the former; 1.79% for the latter
Birmingham Midshires ⁷⁰	8.24%	8.24%	0.91% for both
GMAC ⁷¹	8.05%	8.79%	0.72% for the former, 1.46% for the latter

- 5.36 We used these figures to work out the difference between the amount of monthly interest on a £100,000 mortgage on each of these rates and the amount payable on the ISMI standard rate. We chose a £100,000 mortgage as this is the upper ISMI limit. The shortfalls ranged from £60.00 per month to £165.83 per month that the borrower would have to find from their benefit to meet basic living expenses.
- 5.37 We estimate that the highest shortfall represents 41 per cent of a couple's income support applicable amount and a staggering 65 per cent of a single person's income support applicable amount. This is before any allowance is made for capital repayments. This strongly suggests that the standard interest rate rules make ISMI a woefully inadequate safety net for those borrowers paying sub-prime rates.
- 5.38 The following cases illustrate the problems these shortfalls have caused for some borrowers:

A CAB in Staffordshire reported that a couple who had been in receipt of means-tested benefits for several years had a card through their

⁶⁶ Kensington Mortgage's adverse product guide, 1 August 2007. Rates chosen are medium adverse, 70 per cent LTV, as there were no figures quoted for 75 per cent LTV.

⁶⁷ SPML Product Range, July 2007.

⁶⁸ Preferred Mortgages, product guide, 29 June 2007.

⁶⁹ Platform Mortgage product guide, sourced from their website on 9 August 2007.

⁷⁰ BM Solutions, sub-prime status product guide August 2007.

⁷¹ Information sourced from GMAC's website on 9 August 2007.

door encouraging them to exercise their right to buy. The couple bought their housing association property with a loan from this lender. As the interest rate was 9.59 per cent, there was a shortfall of £130 per month from their income support.

A CAB in Kent reported that a woman whose mortgage interest was paid by income support, was not told by the jobcentre at the beginning of her claim that the amount they would pay might fall short of mortgage repayments, because of the standard rate. The woman was not aware of the shortfall in her mortgage payments until her lender told her she was in arrears.

The need for a mortgage benefit

5.39 As our survey data and other CAB data shows, problems with mortgage arrears are not always caused by changes in circumstances leading to a total loss of earnings. In many cases, borrowers report either a drop in income through loss of overtime or reduced hours, or the pressure of meeting other expenses on a tight budget as a reason for their arrears problem. People on low incomes but who are still employed are able to claim housing benefit from their local authority if they are tenants. But there is no equivalent benefit for homeowners, as ISMI is only available for those who are working less than 16 hours per week. CAB evidence highlights the hardship this causes:

A CAB in Hertfordshire reported that a lone parent with a young child worked 22.5 hours per week. Her income from employment was topped up with tax credits. The client had no money to pay her council tax and was not entitled to council tax benefit. The client was a homeowner and paid a mortgage of £470 per month. If she was paying this in rent, she would be entitled to housing benefit of about £41 per week. Although she would still not be entitled to council tax benefit, she would have money available to pay the council tax, as her housing costs would be lower.

A CAB in east Yorkshire reported that a woman worked 20 hours per week and owned a home on a mortgage. Her partner had died in January 2007 and she was finding it hard to maintain her standard of living. The client sought advice about any benefit that she could claim. Because of the number of hours she worked, she fell between two benefits. She could not claim income support and thereby gain some help with mortgage payments because she worked more than 16 hours per week and was thus deemed to be working full time. She could not claim working tax credit because, although aged over 25, she was not working 30 hours per week, which this benefit deems to be full time.

A CAB in Devon reported that a lone parent with three children sought advice as to why she was worse off in benefit terms compared to a friend of hers in a similar situation. The client was working and received tax credits. However, as she was a homeowner, she was not entitled to any help with mortgage interest, whilst her friend was receiving housing

benefit to help pay her rent. The CAB calculated that if she was a tenant, she would have received £173 per month housing benefit to help pay her £500 per month housing costs payment. The client felt that she was penalised for being a house-owner.

- 5.40 This problem is particularly obvious when the borrower has exercised their right to buy their council home, as the following case shows:

A CAB in Yorkshire saw a couple in their mid-fifties who had exercised their right to buy. The husband was in receipt of incapacity benefit and the wife worked and received a low wage. An adult daughter also lived with them and contributed to the household income. However, both the mother and the daughter's hours of work were reduced, and the couple fell into arrears and were very concerned that they would lose their home. The CAB commented that if they had not bought their house and had remained as tenants, it was possible they could have claimed housing benefit and would not be in danger of becoming homeless.

Conclusions and recommendations

- 5.41 As we have shown in this chapter, safety nets for homeowners are piecemeal and fail low income homeowners. Unless the Government acts to facilitate a more coherent, generous and effective safety net, publicly funded support for house purchase at the front end is likely to become a gift for unscrupulous sub-prime lenders at the back end.

Insurance

- 5.42 We consider that it is not acceptable for government policy to encourage borrowers to enter into private protection insurance markets without giving serious consideration as to how well these markets work for consumers. By way of analogy the government has recently invested considerable resources into ensuring that the pensions system works better for lower to middle income consumers, with the particular aim of increasing take up amongst this group. We have seen previously the scale of possible detriment and financial loss that can accompany mortgage arrears, so it would be reasonable to expect a similar level of investment in getting the mortgage safety net right.
- 5.43 But in respect of the insurance element of the safety net, this cannot simply mean leaving it all for the Competition Commission to sort out. The PPI market inquiry is still at an early stage, but the statement of issues published by the inquiry team makes it clear that 'the focus must be on the competition issues' in the relevant retail markets.⁷² This suggests that a number of key issues of wider concern to the effectiveness of the mortgage safety net may fall outside of the terms of reference of this inquiry.
- 5.44 We believe that these *non competition* issues will need to be dealt with in the context of wider public policy on the mortgage safety net and this is not the

⁷² *Payment protection insurance: statement of issues*, Competition Commission, 2007.

role of the Competition Commission. In contrast we believe that government now needs to give detailed consideration of the urgent outstanding questions on take up, effectiveness and the cost burden of the current insurance safety net arrangements. They should not use the excuse of the Competition Commission to delay action.

- 5.45 **Citizens Advice believes that there is a case for a regulated baseline mortgage payment protection product.** For this to work the costs need to be capped in a similar way to other stakeholder products.

ISMI and an in-work benefit for homeowners

- 5.46 Our evidence suggests that the ISMI safety net is failing to keep CAB clients out of serious arrears problems, because of the limited help that it offers. **At the very least, we believe the Government should review and update the ISMI rules to make it fit for the needs of borrowers in the present mortgage market, in terms of the waiting period, capital limit and standard interest rate.** This is essential because, as we have outlined, both the nature of the borrowers and the mortgage products have changed significantly since the last major ISMI reforms in 1995.

- 5.47 **Citizens Advice believes that there is a compelling case for help for working homeowners on a similar basis to working tenants.** It seems incongruous that the state currently supports buy-to-let mortgages via payment of housing benefit to private tenants, but does not support low income homeowners in a similar way. Currently homeowners are penalised by the benefits system, and may not be able to afford to return or continue in work because of lack of housing support. This seems to contradict the current government policy narrative of making work pay.

A case for wider reform?

- 5.48 Although the recommendations we make above would improve the performance of various elements of the safety net, they will not make a coherent system. But even so, we believe that the assumptions underpinning the structure of the safety net would still fail to reflect the reality faced by many borrowers:

- Borrowers are unlikely to have short term resources, as the CAB client survey showed.
- Sub-prime lenders in particular fail to show forbearance, and in some cases, are aggressively going for possession.
- Insurance take-up is unlikely to increase unless the content and cost of policies improves.
- ISMI is not actually providing the last resort cover.

- 5.49 Taken together, this suggests the need for more than piecemeal reform, and the creation of a coherent safety net, where the costs and benefits are more fairly shared between borrowers, lenders and the state. Proposals for such a wide ranging reform were put forward by the Joseph Rowntree Foundation in

a consultation document in 2006.⁷³ This proposed a scheme where insurance and means-tested benefit support would be bound together. An insurance element would provide non-means-tested support for borrowers who have suffered income loss as a result of an event which is currently considered insurable. For borrowers in uninsurable situations, means-tested support would be available without a waiting period. The proposal suggests that the scheme would be funded by a levy on both borrowers and lenders, as well as through general taxation.

5.50 Citizens Advice believes that the Sustainable Homeownership Proposal (SHOP) is attractive for the following reasons:

- It is a coherent system, which should be administratively more simple resulting in rapid delivery of help for homeowners.
- It should result in a system that provides adequate support for most borrowers in financial difficulties at a reasonable cost.
- It would ensure that the good deal that lenders obtain from insurers is actually passed on to borrowers, who would no longer have to shop around for the best deal.
- The way in which lenders' contributions are weighted could take account of the arrears profile of their lending, including court actions. This could incentivise good practice and internalise some of the additional costs that follow bad arrears management practices.
- Such a scheme should reduce the risks faced by all borrowers which should reduce the cost of borrowing from sub-prime lenders who currently charge significantly higher risk-based premiums. It could therefore increase the affordability of homeownership.

5.51 However, for SHOP to be fully effective, Citizens Advice believes that the following six issues need to be addressed:

- The insurance element must work for everyone. There is no room for blanket exclusion clauses on illnesses like mental health or bad backs. Similarly it must cover the self-employed, people on short term employment contracts and there must not be an age bar.
- One of the issues raised in the SHOP consultation was whether borrowers should be compelled to enter the scheme. On the one hand, compulsion would mean the costs would be spread widely, and indeed, compulsion may be necessary to prevent adverse selection problems. On the other hand, if people are forced to pay into the scheme, it seems unreasonable that they would only have access to means-tested help if they suffered an uninsurable event. This may question whether there can be uninsurable events in the scheme, such as relationship breakdown or wide pre-existing condition clauses.
- SHOP cannot exist without an in-work mortgage benefit or tax credit.
- The means-tested element would also have to work for everyone. It would not be viable with arbitrary interest-rate caps, or absolute capital

⁷³ *Managing risk and sustainable home ownership in the medium term: reassessing the options. A consultation document*, Janet Ford and Steve Wilcox, Joseph Rowntree Foundation, 2006.

limits. It might be reasonable to impose an upper limit on the size of mortgage interest payments, as in some cases, it will be reasonable for some people to trade down from large and expensive houses, but the system should allow for a reasonable adjustment period.

- The main problem with payment protection products is that lenders are making choices for their borrowers but not necessarily in the borrowers' interests. The nature of payment protection products may well be that attempts to introduce more competition will not result in borrowers getting a better deal. Perhaps an alternative might be to require lenders to pay for the insurance of an adequate standard with the cost reflected in the loan APR. This might achieve much the same effect as the insurance element of the SHOP proposal.
- SHOP would also have to consider how to treat secured loans. There is relatively little provision in the current ISMI rules for secondary lending, unless the loan is for specified essential home improvements and repairs. Such loans would have to come within the SHOP framework. However secondary lending may have dual purposes, leaving part of the loan repayment uncovered. Equally second charge lending not covered by the ISMI scheme can just as easily lead to repossession as a participating loan. There may be a case for compulsory payment protection insurance on such second charge lending when the price and quality issues are resolved.

5.52 This chapter has argued that questions of affordability are not just relevant to buying a house, as a change in circumstances can make a mortgage or secured loan unaffordable at any time before it is paid off. Therefore sustainable homeownership is not just about helping people to buy, but to help people remain in their homes over the longer term. Citizens Advice believes that the current system of safety nets falls far short of doing this.

5.53 The final chapter will sum up the issues that need to be addressed if homeownership is to become sustainable for all.

6. The lessons for sustainable homeownership

- 6.1 This report was prompted by an increase in the number of people seeking advice from the CAB service about mortgage or secured loan arrears over the last three years. This coincided with a sharp increase in the number of possession claims in the courts and an increase in the number of properties repossessed by lenders. However, perhaps because the level of repossessions is low compared to the housing market meltdown in the first half of the 1990s, this had not attracted much interest from policy makers until recently. It has taken an arrears crisis in another continent to raise the profile of the problems that borrowers are currently facing here.
- 6.2 So, are we seeing similar problems to those in the US? We must be clear that CAB evidence on mortgage and secured loan arrears does not currently suggest that the UK is in the early stages of an arrears crisis that will engulf the entire mortgage market. The evidence we have received shows that mortgage and secured loan arrears problems seen by the CAB service tend to be fairly tightly focused among lower income borrowers, most of whom had taken out loans with sub-prime lenders. We believe that the current problem is that increasing numbers of people at the margins of the mortgage market are unable to sustain home ownership.
- 6.3 This should be a concern for policy makers as it has clear implications for the Government's commitment 'to help as many people as we can into home ownership'.⁷⁴ The main initiative to achieve this has been to provide government-backed equity loans to address the current high house prices faced by many first time buyers. While Citizens Advice welcomes the Housing Green Paper's commitment to back the aspirations of lower income households, CAB evidence shows clearly that entering home ownership is only one part of the battle. Indeed, from this evidence it is clear that households with very low incomes can enter into home ownership and that initial purchase price is not always an issue. The problem has been staying in homeownership for any period of time, particularly in the years immediately after taking out a mortgage, remortgage or other secured loan.
- 6.4 The main conclusion of this report is that extending home ownership to excluded groups means exposure to risks that could ultimately cost these people their home. More importantly, the circumstances of many of these borrowers may actually place them at a higher objective risk of defaulting on their mortgage or other secured loan. Indeed, one of the key barriers to entering home ownership for lower income households can be getting a mortgage. We have seen how mainstream lenders would not take on the risks that many borrowers posed. Viewed from this perspective, the key driver increasing access to home ownership for lower income households over the last few years might be the development of a sub-prime mortgage market that will take on riskier borrowers. This has happened at the cost of higher interest rates, charges and little by way of forbearance if things go wrong because these firms expect a premium for taking on additional risk. These extra costs

⁷⁴ *Homes for the Future, more affordable, more sustainable*, DCLG, 2007.

only serve to increase the already heightened vulnerability to default of sub-prime borrowers. Research for the Joseph Rowntree Foundation published in 2005 concluded that the relationship between non-mainstream secured lending and sustainable homeownership 'is not necessarily straightforward and indeed sub-prime can both promote sustainability and undermine it.'⁷⁵

- 6.5 We believe that public policy should not assume that financial services markets will deliver benefits to consumers in a straightforward and successful manner. The Government's insistence that commercial insurance should take the lead role in the mortgage safety net has not mitigated the credit risks faced by many CAB clients. In some cases payment protection insurance has made these risks worse. Likewise, helping people into mortgage markets by reducing the effective house purchase price will not by itself guarantee that they can continue to pay the mortgage shortly afterwards. For example, borrowers who have benefited from a substantial right to buy discount only to fall into serious arrears some time later.
- 6.6 Instead, public policy must balance the desire to help people into homeownership with an increased commitment to help keep them there. Otherwise public subsidies may simply reward bad practices by lenders. It cannot be good public policy to encourage people to enter into risky long term financial obligations without also trying to minimise those risks or mitigate their effects where problems are not foreseeable or otherwise avoidable. This must also include alternatives to homeownership.
- 6.7 This report argues that public policy and regulation of mortgage markets needs to pay more attention to the prevention and mitigation of the risks faced by lower income homeowners. We make a package of recommendations on how we believe that these can be improved. The main points of this are summarised below, along with further overarching recommendations.

More effective regulation

- 6.8 We welcomed the Government's recognition of the importance of effective regulation of mortgages in the recent Housing Green Paper. However, as this report has shown, regulation of mortgage and secured loan markets is ineffective because there is no one regulator enforcing compliance with detailed rules on selling, lending, arrears management and possessions for all mortgage and secured loans. **Citizens Advice recommends that the Government establishes a single regulatory framework for mortgages and secured loans granted to consumers.** Importantly, this does not mean simply moving secured loans to the current FSA regulatory regime. Although the Consumer Credit Act does not have comprehensive selling rules, it does contain important consumer rights, such as time order and the unfair credit relationship provisions that do not have a counterpart in the FSA rules.

⁷⁵ *Lending to higher risk borrowers: Sub-prime credit and sustainable home ownership.* Munro M, Ford J, Leishman C and Kofi Karley N., Joseph Rowntree Foundation, 2005.

How real are the benefits of homeownership?

- 6.9 By way of conclusion, it is worth revisiting the basic justifications for the policy of encouraging more homeownership. These are meeting aspirations and sharing in housing wealth. Citizens Advice sees two problems with this. Firstly, for many low income homeowners, accessing housing wealth currently means taking out an expensive and risky secured loan. Secondly, people want two things from homeownership: security and control over their housing and the opportunity to accumulate wealth. Current Government policy assumes that these go together, but both aspirations could be delivered separately, differently and at lower risk to low income households.

Accessing housing wealth

- 6.10 Second charge lending and remortgaging have become significant features of the housing debt cases seen by bureaux. Borrowers have seen the value of their home increase and, understandably, want to use that wealth for consumption. Lower income homeowners may have no other choice but to use their equity in their home to pay for larger or unexpected items of expenditure, or even ongoing living costs.
- 6.11 One of the more remarkable findings of our 2006 snapshot survey was that although over a third of the respondents had incomes of below the poverty line, the average equity in their homes was about £50,000. So people on extremely low incomes are suffering hardship, whilst sitting on substantial resources that they have no way of using, without resorting to further borrowing.
- 6.12 The choice, suitability and affordability of unsecured credit products for people on low incomes is a major plank of the Government's financial inclusion strategy. However, there has been little examination of the need for alternative equity withdrawal products that give low income homeowners a different option to sub-prime mortgage markets. We note the recent Joseph Rowntree report highlighting how small-scale equity release products might be used to help low income homeowners with needs such as housing repair and personal care costs.⁷⁶ We made this point in our evidence to the Treasury Select Committee's inquiry into Financial Inclusion. In its report, the Committee recommended that the Government explore ways of developing the capacity of third sector lenders, such as community development finance initiatives to provide such finance.⁷⁷ In its response, the Government stated that although their current strategy for affordable credit focussed on helping with short term expenditure or income shocks, they would also consider whether they needed to take action on longer-term types of credit, including mortgage finance and home improvement loans.⁷⁸ **Citizens Advice**

⁷⁶ *Obstacles to equity release*, Terry, R. and Gibson, R., Joseph Rowntree Foundation, 2006.

⁷⁷ *Financial inclusion: credit, savings, advice and insurance*, Twelfth report of the House of Commons Treasury Select Committee, 2005/06.

⁷⁸ *Financial inclusion: Government and other responses to the Committee's Twelfth and Thirteenth Reports of Session, 2005/06 and the Committee's First Report of Session, 2006/07, Fourth Special Report of the House of Commons Treasury Select Committee, 2006/07.*

welcomes this and recommends that the Government considers how the use of equity release, third sector lenders and the Social Fund might be used to reduce the costs and risks of equity withdrawal for low income homeowners.

- 6.13 More generally, we believe that there is a challenge for Government to investigate how the costs of mortgages for house purchase used by low income or credit-impaired households could be reduced. To a certain extent the Government has attempted to deliver this for homeowners by reducing the purchase price, and therefore mortgage payments, via HomeBuy and associated schemes. But take up has been poor; borrowers still have to enter the mortgage market and face the problems that this report has identified.

Asset building and secure long term housing

- 6.14 CML research has found that the two most commonly cited benefits of homeownership are the investment opportunity and security in ownership.⁷⁹ When asked about the best place to save, 70 per cent of working people chose property as the best long term investment, compared with only 10 per cent who chose stocks and shares and 7 per cent who chose savings accounts. Thirty nine per cent expected property to help pay towards their retirement.⁸⁰
- 6.15 Clearly people associate homeownership as a form of long term saving, and their saving strategies may include a choice of paying into a pension scheme, other means of savings or paying a mortgage. CAB mortgage arrears clients tend to be on low incomes, and so may be particularly budget constrained in the savings choices they make. Homeownership may therefore seem a particularly attractive option. But as we have seen, it is also risky as an asset-building strategy. If things go wrong, a homeowner can lose their investment and the roof over their head, if their lender repossesses their home.
- 6.16 Citizens Advice believes that low income households may need an alternative means to satisfy both of the benefits of homeownership described above. A recent review of housing policy in England carried out for the Government argued that shared equity products, like HomeBuy, might have an important role in diversifying the asset portfolios of lower income households.⁸¹ But this may not substantially reduce the credit risks that borrowers face.
- 6.17 However, the Government's reforms of the pension system, including the planned introduction of personal accounts, may lead to less reliance on household wealth as a form of long term savings for some people. This form of asset building also has the advantage of not exposing households to the credit risk associated with taking out a mortgage. More needs to be done to find alternative ways for people to build up assets without having to enter homeownership.

⁷⁹ *Housing Finance, Summer 2004*, CML.

⁸⁰ *The State of the Nation's Savings, 2006/07*, Association of British Insurers (ABI).

⁸¹ *Lessons from the past, challenges for the future*, ODPM, 2005.

- 6.18 The other half of this equation is to provide access to long term secure housing without becoming a homeowner. Citizens Advice welcomes the Green Paper's commitment to build more social housing. However, access to social housing is likely to remain tied to severe housing need for the foreseeable future. The remaining alternative is the private rented sector, where security of tenure is currently poor, and assured shorthold tenancies, where the landlord can end the tenancy by simply giving two months' notice, are the norm. This lack of security may also result in tenants being evicted for trying to exercise their statutory rights on the state of repair of the property. Compared to some other European countries, the UK has one of the lowest levels of privately rented properties and the least security of tenure.⁸² Citizens Advice believes that a more secure form of private tenancy could fulfil one of the benefits of homeownership without exposing households to credit risk. **We recommend that the Government considers how the housing market could be rebalanced to make private renting a more viable long term option for more households.**

Conclusion

- 6.19 We started this report by stating that Citizens Advice believes that everyone should have a choice of tenure. Therefore we support Government's efforts to increase access to homeownership where this is a suitable, viable and sustainable option. However, the evidence presented in this report shows that for many low income homeowners the risks have ultimately outweighed the benefits.
- 6.20 In this report, we have made recommendations aimed to reduce the risks that these homeowners currently face. Bringing this about will require coordinated and sustained action across Government and by regulators. **Citizens Advice recommends that the Government should develop a cross-departmental approach to address the issues raised in this report.** This needs to be long term and sustained and involve all relevant government departments, including HM Treasury, DCLG, DWP, BERR, MoJ, FSA and OFT. It needs to consider whether some of the problems associated with homeownership can be dealt with by looking at other forms of tenure and savings. Only then will people be able to meet their housing choices and save for the future in a way that does not set them up to fail.

⁸² See Appendix 2 in *The tenants' dilemma – warning: your house is at risk if you dare complain*, Debbie Crew, Crosby and Formby CAB, 2007.

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Appendix 1 – List of all Citizens Advice Bureaux sending evidence about mortgage lending and arrears between September 2005 and August 2007

EAST REGION

Basildon
Bedford & District
Braintree, Halstead & Witham
Broxbourne
Buntingford
Bury St Edmunds
Cambridge
Castle Point
Chelmsford
Colchester
Dacorum & District
Dunstable
Fenland
Harlow
Hertford
Hertsmere
Hitchin
Huntingdon
Ipswich & District
Kings Lynn
Leighton Linlade
Leiston
Luton
Mid Suffolk
Mid-Bedfordshire
North Walsham & District
Norwich & District
Peterborough
Rochford
Southend-on-Sea
St Neots
Stevenage
Three Rivers
Uttlesford
Waltham Abbey
Watford
Wickford
Wymondham,
Attleborough & District

LONDON REGION

Addington
Barking

Battersea
Beckenham & Penge
Bexleyheath
Brentford & Chiswick
Carshalton & Wallington
Catford
City of London
Dagenham
East End
Enfield
Greenwich
Harrow
Hayes
Hendon
Hornchurch
Kingston
Lewisham MAS
Leytonstone
Merton
New Barnet
Palmers Green
Peckham
Royal Courts of Justice
Ruislip
Southwark
Sutton
Sydenham
Thornton Heath
Twickenham
Uxbridge
Walthamstow
Westminster

MIDLANDS REGION

Ashfield
Biddulph
Boston
Bridgnorth
Bromsgrove
Burntwood
Burton-on-Trent
Charnwood
Chelmsley Wood
Chesterfield
Broxtowe

Coventry
Daventry
Derby
Dudley District
East Lindsey
East Staffordshire
Erewash
Handsworth
High Peak
Hinckley
Kettering
Lincoln
Mansfield
Mid - Derbyshire
Nene Valley
Newark
Newcastle-Under-Lyme
North East Derbyshire
North Warwickshire
North West
Leicestershire
Northampton & District
Northfield
Nottingham & District
Nuneaton & Bedworth
Redditch
Rugeley & District
Rutland
Sandwell
Shirley
Solihull
South Holland
South Kesteven
South Staffordshire
Stafford & Stone
Stoke-on-Trent
Stratford upon Avon
Warwick District
West Lindsey
Wyre Forest

NORTHERN IRELAND

Ballymena
Banbridge & District
Bangor & District
Central Belfast

Coleraine
Cookstown
Down District
Glengormley
Larne
Newry
Newtonabbey

NORTH REGION

Alnwick & District
Barnsley
Batley
Blyth Valley
Boothferry
Chapelton
Chester-le-Street
Darlington
Derwentside
Dewsbury
Doncaster
Easington
East Yorkshire
Gateshead
Halifax
Harrogate
Hartlepool
Hull City Centre
Keighley
Leeds
Middlesbrough
Newton Aycliffe
North East Doncaster
North Kirklees
North Tyneside District
Pontefract
Richmondshire
Ryedale
Scunthorpe
Sedgefield & District
Selby District
Sheffield DSU
South Elmsall
South Kirklees
South Tyneside
Stockton & District
Wakefield District
Washington
Wear Valley
York & District

NORTH WEST REGION

Altrincham
Anfield
Barnoldswick
Birchwood
Blackburn with Darwen
Blackpool
Bolton
Bootle
Bury
Carlisle
Chester
Chorley
Congleton District
Copeland
Crewe
Ellesmere Port &
Neston
Harpurhey
Heswall
Huyton
Hyndburn
Kirkby
Knowsley
Lancaster
Leigh
Liverpool Central
Liverpool County Court
Service
Macclesfield, Wilmslow
& District
Manchester Central
Marple
Morecambe
Preston
Salford City
South Lakeland
Southport
Stockport
Stretford
Thornton Cleveleys
Ulverston
Wallasey
Warrington
West Kirby
West Lancashire
Wigan

SOUTH EAST REGION

Alton
Andover
Ash
Ashford & Tenterden
Banbury
Basingstoke
Bishops Waltham
Bracknell
Brighton & Hove
Burgess Hill
Camberley
Canterbury District
Caterham &
Warlingham
Chatham
Chichester & District
Crawley
Deal
Didcot & District
Dover, Deal & District
East Grinstead
Eastbourne
Epsom & Ewell
Fareham
Farnborough
Gillingham
Gosport
Gravesham
Guildford
Hart District
Haywards Heath
High Wycombe &
District
Horsham
Leigh Park
Lewes and Seaford
Littlehampton & District
Lymington
Maidenhead
Maidstone
Malling
Milton Keynes
Newport Isle of Wight
Oxford
Oxted
Portsmouth
Reading
Romsey & District

Runnymede
Sevenoaks
Slough
Southampton
Swale
Swanley & District
Tadley
Tonbridge
Tunbridge Wells
Walton Weybridge &
Hersham
Waterlooville
Waverley
Wealden
West Berkshire
West Oxfordshire
Whitehill & Bordon
Winchester
Woking

**SOUTH WEST
REGION**

Barnstaple
Bath
Bideford
Bournemouth
Bristol
Caradon
Carrick
Cheltenham
Cirencester
Dorchester
East Devon
East Dorset
Exeter
Exmouth
Forest of Dean
GLOMAS
Gloucester
Kennet
Kerrier District
Mendip
Mid Devon
North Cornwall
North East Somerset
North Wiltshire
Paignton
Penwith
Plymouth
Poole

Purbeck
Salisbury & District
Sedgemoor
South Gloucestershire
South Hams
South Somerset
St Austell
Stroud & District
Swindon
Taunton & District
Teignbridge
Torquay Debt Advice
Unit
West Wiltshire Wide

WALES

Ammanford
Barry
Blaenau
Bridgend
Caerphilly County
Cardiff
Cardigan
Carmarthen
Chepstow
Conwy District
Cwmbran
Cynon Valley
Denbigh
Dwyfor
Flint
Haverfordwest
Merthyr Tydfil
Monmouth
Neath
Newport
Pembroke & District
Pontypool
Port Talbot
Prestatyn
Rhondda Taff
Rhyl
Swansea
Vale of Glamorgan
Wrexham

Appendix 2: List of all Citizens Advice Bureaux that took part in other research for this report

SEPT 2006 SURVEY

Ash
Barking
Bath
Bedworth & Nuneaton
Berwick
Blyth Valley
Bognor Regis
Bournemouth
Bridgend
Bridgnorth
Bristol
Bromsgrove
Broxtowe
Bude
Bury St Edmunds
Cambridge
Caradon
Carmarthen
Chelmsford
Chelmsley
Christchurch
Crawley
Crosby, Formby
Cynon Valley
Denbighshire
Derby
Durham
Easington
East Lindsey
East Staffs
East Yorks
Ellesmere Port
Exeter
Fenland
Gateshead
Gosport
Guernsey
High Wycombe
Hillingdon
Hull
Kirkham & Rural Fylde
Lincoln
Littlehampton
Maidenhead
Mid Derbyshire
Middlesbrough

Northampton
Norwich
Sedgemoor
Selby
Solihull
South Derbyshire
South East Sheffield
Stevenage
Stratford-upon-Avon
Swindon
Wakefield
Warrington
Wealden
Wear Valley
West Norfolk
Westminster
Wrexham

COURT ADVISERS

Bristol
Chelmsford
Colchester
DAWN
Enfield
Great Yarmouth
Harrogate
High Wycombe
Kerrier
Kingston-upon-Thames
Macclesfield
Medway
Newcastle City
Nottingham
Rossendale
Southampton
South Ribble
South Somerset
Stockport
Stoke-on-Trent
Tameside
Wandsworth
Worcester
Wrexham

CLIENT INTERVIEWS

Burton-on-Trent
Cambridge

East Lindsey
Greenwich
Kingston-upon-Thames
North-East Somerset
Nottingham
Stratford-upon-Avon
Washington
Wyre Forest

JUNE 2007 SURVEY

Aldershot
Barnsley
Bootle
Bristol
Calderdale
Chester
Chorley
Colchester
Darlington
Doncaster
East Lindsey
Lincoln
Lowestoft
Maidstone
Middlesbrough
Milton Keynes Central
Morecambe
North Dorset
Reading
Redditch
Rugeley & District
Sedgemoor
Sheffield DSU
Shropshire
South Kirklees
South Somerset
South Tyneside
Southampton
Wirral
Woking
Wokingham
Wolverhampton
Worcester
Worthing
Wyre Forest