Mortgage pre-action protocol checklist

Name of court	Claim no.

Name of claimant	
Name of defendant	
Mortgage account number	

You must produce two copies of the Checklist on the day of the hearing.

Checklist

1. Is the possession claim within the scope of the Protocol? ☐ Yes ☐ No

2. Have you provided the defendant with the information/notice in the Protocol —

   (a) paragraph 5.1(1) ☐ Yes ☐ No If Yes, date provided: ☐☐/☐☐/☐☐☐☐

   (b) paragraph 5.1(2) ☐ Yes ☐ No If Yes, date provided: ☐☐/☐☐/☐☐☐☐

   (c) paragraph 5.7 ☐ Yes ☐ No If Yes, date of notice: ☐☐/☐☐/☐☐☐☐

3. Do you have evidence that the defendant has made a claim for —

   • Support for Mortgage Interest (SMI), or ☐ Yes ☐ No

   • mortgage payment protection. ☐ Yes ☐ No

   If Yes, please explain why possession proceedings are continuing.

4. Is there an unresolved complaint by the defendant to the Financial Ombudsman Service that could justify postponing the possession claim? ☐ Yes ☐ No

   If Yes, please explain why possession proceedings are continuing.

5. Summarise the number and dates, in the three months prior to the date of this checklist, you attempted to discuss with the defendant ways of repaying the arrears.

© Crown copyright 2009

6. In the three months prior to the date of this checklist have you rejected any proposals by the defendant to change the date or method of regular payments? ☐ Yes ☐ No

   If Yes, did you respond in accordance with paragraph 5.4 of the Protocol? ☐ Yes ☐ No

   If No, please explain why.

7. Have you rejected a proposal for repayment by the defendant in the three months prior to the date of this checklist? ☐ Yes ☐ No

   If Yes, have you responded in accordance with paragraph 5.5 of the Protocol? ☐ Yes ☐ No

   If No, please explain why.

8. Has the defendant indicated that the property will be or is being sold? ☐ Yes ☐ No

   If Yes, explain why possession proceedings are proceeding.

Statement of Truth

*I believe that the facts stated in this Checklist are true.

*I am duly authorised by the claimant to sign this statement.

Signed _____ Date _____

Full name

Name of claimant's solicitor's firm

Position or office held

**Delete as appropriate*

Guidance for the mortgage pre-action protocol checklist

The Checklist

This guidance is provided for those using the new Mortgage Pre-Action Protocol Checklist. Use of the Checklist comes into effect on 1 October 2009 for all claims issued on or after that date in order to provide a uniform format for the provision of information to demonstrate compliance with the Protocol.

This guide must be read with the Mortgage Pre-Action Protocol, the Civil Procedure Rules and Practice Direction 55.

The Checklist (form N123), must be completed by all claimants (lenders) or their representatives making a possession claim. The claimant or their representative should be able to explain to the court the actions taken or not by the claimant, and the reason for issuing a possession claim.

Once the claimant and defendant (borrower) have been notified by the court of the date of the hearing, a Checklist must be completed indicating the action taken by the claimant within the previous three months to reach an agreement with the defendant, and comply with the Protocol.

The claimant must present two copies of the Checklist on the day of the hearing. No additional documents are necessary unless an issue arises.

Claimants can copy this form onto their systems but the form must not go beyond two sides.

Scope

The following mortgages fall within the scope of the Protocol and Checklist –

(i) first charge residential mortgages and home purchase plans regulated by the Financial Services Authority under the Financial Services and Markets Act 2000;

(ii) second charge mortgages over residential property and other secured loans regulated under the Consumer Credit Act 1974 on residential property; and

(iii) unregulated residential mortgages.

Where a potential claim includes a money claim and a claim for possession, these are also within scope.

Q1 – requires confirmation of the type of mortgage and whether it is within scope of the Protocol as indicated above. If the answer is No, there is no need to compete the rest of the form. However, you must be prepared to explain to the court why you consider that the mortgage does not fall within the scope of the Protocol.

If the answer to Q1 is Yes, all the remaining questions must be answered in full.

Q2 – answer the questions Yes or No, as appropriate, and insert the dates where relevant. Where you have not complied with one or more of these requirements, you must be prepared to explain to the court in full why that is the case.

Q3 – answer the questions Yes or No, as appropriate. Where a claim, either for Support for Mortgage Interest (SMI) or under a mortgage payment protection policy, has been made, you must set out clearly and succinctly why you are proceeding with a claim for possession.

Q4 – answer the question Yes or No, as appropriate. If the defendant has an unresolved complaint you must set out clearly and succinctly why you are proceeding with a claim for possession.

Q5 – you should provide here a list of dates and details of the associated media (for example, letter, telephone, etc). Where use has been made of automated diallers, which do not necessarily keep an individual record of each attempted call, you should confirm the number of attempts and frequency that your system is programmed to make.

Q6 – answer the question Yes or No, as appropriate. Where you have answered:

- No, then no further information is required.
- Yes, you must also confirm whether or not you have complied with the requirements of paragraph 5.4 of the Protocol when notifying the defendant of your decision. If the answer to that question is:
    - Yes – then no further information is required on the Checklist but you must be prepared to explain to the court what action you took if requested to do so.
    - No – you should set out your reasons for non-compliance clearly and succinctly.

Q7 – answer the question Yes or No, as appropriate. Where you have answered:

- No, then no further information is required.
- Yes, you must also confirm whether or not you have complied with the requirements of paragraph 5.5 of the protocol when notifying the defendant of your decision. If the answer to that question is:
    - Yes – then no further information is required on the Checklist but you must be prepared to explain to the court what action you took if requested to do so.
    - No – you should set out your reasons for non-compliance clearly and succinctly.

 © Crown copyright 2009

Q8 – answer the question Yes or No, as appropriate. Where the defendant is trying to sell their property you need to explain clearly and succinctly why you are bringing proceedings including, specifically, whether or not the defendant has complied with the requirements of paragraphs 6.2 and 6.3 of the Protocol.

The statement of truth

The statement of truth must be signed and completed by the claimant or representative. This section must be completed in order to validate the information provided.

Service of the Checklist

Two copies of the Checklist must be brought to the hearing.