



THE UK INSOLVENCY HELPLINE

TIME ORDERS

F A C T S H E E T N O 6

WHAT IS A TIME ORDER?

A time order is a way of asking the court to give you more time to pay a loan agreement if you have fallen behind with the payments. It can change:

- The amount you have to pay each month.
- How long the loan will last.
- In some cases it is also possible to change the interest rate.

A time order is particularly useful if you have a secured loan and your lender is threatening to repossess your home.

You can only apply for a time order if your credit agreement is regulated by the Consumer Credit Act 1974.

This covers credit agreements which were originally up to **£15,000** if you took the loan out **BEFORE 1 May 1998**.

If you took the loan out **AFTER 1 May 1998** then the loan can be up to **£25,000** and still be covered by the Consumer Credit Act.

Bank and building society mortgages taken out to buy your home are **not** covered. If you have a loan agreement it should state whether it is covered by the Consumer Credit Act. The agreement should have a heading: CONSUMER CREDIT AGREEMENT REGULATED BY THE CONSUMER CREDIT ACT 1974.

WHEN CAN YOU APPLY FOR A TIME ORDER?

- 1) When a “Default Notice” or “Calling in Notice” or “Termination Notice” has been issued by your lender.

The lenders can issue a default or termination notice and call in the loan if you have fallen behind with payments. Once you have received this, you can make an application to the county court for a time order. The procedure and forms you need to use depends upon whether you have a secured loan, a hire purchase/conditional sale agreement or an unsecured loan. See the sections below for details of how to apply.

There will usually be a fee to pay with your application. If you are on a low income or certain benefits you may not have to pay the fee. **See the section on fees at the end of this factsheet.**

- 2) When court action has been taken.

If a creditor has already started court action against you then you can still apply for a time order. The procedure and forms you need to use depends upon whether you have a secured loan, a hire purchase/conditional sale agreement or an unsecured loan. **See the sections below for details of how to apply and whether there are any fees to pay for the application.**

WHAT TYPE OF DEBT CAN YOU HAVE A TIME ORDER ON?

Unsecured credit

If you have an ordinary credit agreement which is not a secured loan/second mortgage you would **not** normally need to ask for a time order to be made.

If a creditor has already taken court action, then you should apply to pay the judgment at a rate you can afford.

The court should look at making an order for you to pay in instalments you can afford. Interest is normally frozen on court judgments for agreements under the Consumer Credit Act automatically.

You may want to ask for time order if a default notice has been issued but the creditor is refusing either to accept your offer of payment, or to freeze the interest. If interest is still being added on to the debt and the creditor refuses to take court action then applying for a time order may be the only way to ask for the interest to be frozen. If the court makes a time order and you keep up to date with payments, a creditor cannot apply for a county court judgment to be made.

This means a judgment will not appear on the county court register or on credit reference agency files, although the creditor may have registered the default on your credit file already when you fell behind with the loan.

1) How to apply before court action

You need a claim form called an **N1** which you have to fill in with supporting information called the “Particulars of Claim”. You also need a full personal budget sheet and details of your circumstances. This should be taken to your local county court.

There will be a fee of £150 to pay with your application. If you are on a low income or certain benefits you may not have to pay the fee. **See the section on fees at the end of this factsheet.**

The creditor can put in a defence to the court objecting to your time order application. There will be a hearing and the district judge will decide whether to make a time order in your case.

Warning: starting a claim in the county court is complicated ☎ Phone us for advice.

2) How to apply after court action.

You can apply for a time order after your creditor has taken you to court by using a general court application form called an **N244**. There will be a fee of £65 to pay with your application unless you do not have to pay the fee. **You can see an example application at the end of the factsheet.** You need to include full details of your circumstances and a full personal budget sheet with the application. There will be a hearing where the creditor can object to the time order being made. The district judge will decide whether to make a time order in your case.

If the creditor started action against you in a county court elsewhere you may need to apply for the case to

be transferred to your local county court. ☎ **Phone us for advice.**

Creditors who charge interest after judgment.

Some creditors say they can charge interest before and after judgment even though the court usually stops interest automatically on a consumer credit act regulated agreement. It may be possible to ask the court to make a time order in this situation to stop or reduce the interest. This is a complicated area. We have a factsheet “Interest on a consumer credit judgment” which may help. ☎ Phone us for advice.

Hire Purchase/Conditional Sale agreement

When a creditor goes to court for a “Return of Goods Order” you can ask for this to be suspended on the condition that you pay a fixed amount per month. This will usually be to pay the normal monthly instalment plus an amount on top to clear the arrears. You can ask the court to make a time order if you cannot afford to pay the full instalments. The court will often make a court order to let you keep the hire purchase/conditional sale goods and pay off the agreement at a reduced amount without stating they are making a time order.

1) How to apply before court action.

If the creditor has issued a default notice on a hire purchase/conditional sale agreement then you can apply to the county court for a time order. The court can look at changing the terms of the whole agreement on a hire purchase/conditional sale agreement, *not just the arrears*, even if the whole loan has not been called in. For details of the application process see the section on “unsecured credit”. ☎ **Phone us for advice.**

2) How to apply after court action.

If your creditor goes to court for a “return of goods order” they will send you a claim form called an **N1**. You can fill in the reply form called an **N9C** which comes with the application. Ask for the return order to be suspended (so that you keep the goods) on the condition that you pay a fixed amount on top to clear the arrears.

You can ask the court to agree that you pay less than the full monthly instalment if that is all you can afford. Your offer will need to be “reasonable” rather than a token payment if you want to get a time order. If the creditor accepts the offer there does not have to a hearing for this to happen.

If the court agrees that you will get a return order that is not enforceable as long as you pay off the instalments set by the court. This is actually a time order although it may not be clear that this is the case.

If you have been sent a return order you can still apply for a time order to be made using an **N244**. For details of the application process see the section on “unsecured credit”. 📞 **Phone us for advice.**

We have a factsheet on “How to deal with hire purchase debt” which might be of help to you. 📞 **Phone us for advice.**

Secured Loans

A time order is most useful for this type of credit. You may use it to re-schedule a loan secured on your home in order to prevent repossession of your home.

You can apply for a time order once the default notice has been issued or if your lender takes you to court to ask for a possession order.

1) How to apply before court action.

A time order may be most useful to apply for if you have a secured loan. You may be able to use a time order to reschedule the payments on a loan secured on your home in order to stop repossession action. You can apply for a time order once the creditor has sent a default notice and called in the loan because you have fallen behind with the payments. You need to apply to your local county court using a court form called an **N440**. **You can see an example application at the end of the factsheet.** You also need to fill in details of your income and outgoings and personal circumstances on a “schedule”. **An example of the schedule is at the end of the factsheet.**

There will be a fee of **£150** to pay with your application. If you are on a low income or certain benefits you may not have to pay the fee. **See the section on fees at the end of this factsheet.**

There will be a hearing where your lender can object to a time order being made. It is up to the district judge to make a time order or refuse your application. If the time order is refused the lender could start possession proceedings to try to repossess your home.

2) How to apply after court action.

You can apply for a time order when your lender makes a possession claim against you in your local county court. You will be sent a form **N5** by the court and need to fill in the defence form called an **N11M**. Tick **BOX 6** to ask the court to consider a time order and send this to the court with full details of your defence, details of income and outgoings and personal circumstances. You can ask for the payments to be reduced and for the loan rescheduled if necessary. See the section “What should you ask for?” Putting in a defence is complicated 📞 **Phone us for advice.**

There is no fee to pay with this application as you are just replying to a court claim. (Fees are added to the possession claim by your lender instead).

There will be a hearing where the lender can object to a time order being made. The district judge may decide to make a time order, suspend possession and allow you to stay in your home as long as you make the payments ordered. They can also refuse your application and make an outright possession order.

If you already have a possession order you can still make an application for a time order. You need to use the general application form called an **N244**. For details of the application process see the section on “unsecured credit”. 📞 **Phone us for advice.**

HAS THE WHOLE LOAN BEEN CALLED IN?

The law has not been entirely clear on what the court’s powers are when making a time order. Following a recent Court of Appeal case, time orders seem to apply in two situations:

- Sometimes a time order can only deal with arrears, leaving the monthly payment unchanged, but with power to change the amount of interest being added to the arrears. This is the case if the lender has **only** issued a default notice but the whole loan has **not** been called in. This is unusual as under the terms of most agreements the whole loan is called in automatically on default.
- Sometimes a time order can be used to change the whole agreement, setting lower payment and interest charges, and in certain circumstances stopping interest being added at all. This can **only** be done when the whole loan has been called in by the lender, where the loan agreement has automatically terminated on default or once possession proceedings have started.

It should be easier to ask the court to make a time order following a decision in the Court of Appeal in March 1995. The case is called *Southern & District Finance plc v Barnes*. This is very important as the court agreed that *the whole amount of money owing on the agreement can be included in a time order. Also the monthly instalments and the interest rate on the loan agreement can be reduced if the court thinks it is just to do so, and it is needed to make the time order work.*

- As part of the case of *Southern & District Finance v Barnes*, the Court of Appeal also said that time orders should only “normally” be made if someone is in temporary financial difficulty. You may have to show that your case is not a normal one or there is a good chance of your circumstances improving. The court may well give a time order only for a limited period. You may have to ask for any exceptional circumstances to be taken into account to allow you to have a time order over a longer period. Argue that under *Director General of Fair Trading v First National Bank (2001)*, making a time order over a longer period is possible if it “seems just in all the circumstances”.
- Anything you can say to show your situation is through no fault of your own will help when applying for a time order as the court will look at your payment record, how you got into debt and why you took the loan out.

WHAT SHOULD YOU ASK FOR?

- If you cannot afford the full instalment you need to ask for the loan and arrears to be re-scheduled.
- For the court to be able to make a time order you must be able to afford to make an offer of payment. The court will consider whether you can afford to pay what you have offered or if you are offering as much as you realistically can.
- The court has to look at the position of the creditor as well as your situation when deciding if it is “just” to make a time order. This means if you cannot make an offer at all or are unlikely to ever be able to pay off the loan the court may decide not to make a time order.
- If you have asked for a new instalment rate but want to repay the debt within the same period of time then you can ask the court to change the interest rate, to allow you to do this. Also the interest may be so high that your reduced payments have no effect without reducing the interest. You

will also need to ask for any default interest and charges to be frozen.

- If you can afford to make the normal monthly payments you need to ask for a time order to fix payment on the arrears only. If you get a time order on the arrears only you may want to ask the court to reduce or freeze the interest in order to let you repay the debt over a reasonable time. This will be necessary where interest being added on to the arrears is the same or more than the amount you can afford to pay towards clearing the arrears.

IS IT “JUST” TO MAKE A TIME ORDER?

Make sure you add any points that may help the court decide that your case is “just”. **Remember: the court must look at the creditor’s position as well as your circumstances.**

- Was the reason you took out the credit a “good” one?
- Could you afford the payments when you first took out the agreement?
- Is your agreement very expensive or not appropriate for your needs at the time? Point out a high interest rate and how much you would have to pay back over the whole loan period.
- Have you taken out further credit since? If so, was there a good reason for this?
- Have you had a good payment record until the point you stopped paying?
- What is the reason for your non payment? Have your circumstances changed? Explain the background to your situation.
- Have you tried to sort out your problems and ask the creditor for a payment arrangement? (e.g. you haven’t ignored the debt). If the creditor has refused to negotiate you need to point this out. Start making the payments you have offered as a gesture of good will.
- Is your situation temporary and likely to improve in the future? The court is likely to want to make a time order for a time limited period.

COSTS

You need to be careful with time order applications in relation to secured loan agreements. The secured lender is usually allowed to add possession costs and charges to the outstanding balance you owe on our loan. If your time order is refused you may have lots of extra costs added to your debt. This will usually happen automatically. If there is a good reason that you feel the costs are unfair, you can ask the court to refuse the lender's costs. This might be if the creditor has been "unreasonable" in some way.

EXTORTIONATE CREDIT

If you feel the interest rate charged on your agreement is excessively high, you could challenge the agreement using the "*Extortionate Credit*" section of the Consumer Credit Act as well as applying for a time order. It is very difficult to persuade the courts that the interest rate on a particular loan counts as "*extortionate*". ☎ **Phone us** or ask your local advice centre for more information about this.

If you think a time order may help your situation it is usually best to seek help from a local advice agency. Although this factsheet explains what time orders can do, the outcome will depend on how the district judge views your circumstances, and what the court thinks its powers are under the Consumer Credit Act 1974.

The next pages outline:

- **A copy of relevant sections of the Consumer Credit Act 1974.**
- **Also an explanation of whether you have to pay a fee to the county court for your application.**
- **A sample application on a N440 form. Use this to apply when your secured loan has been called in.**
- **A sample application on a N244 form. Use this if you want to apply after the creditor has started court action.**

TIME ORDER LEGISLATION

Consumer Credit Act 1974

Section 129 Extension of time

- 1) If it appears to the court just to do so:-
 - (a) on an application for an enforcement order: or
 - (b) on an application made by the debtor or hirer under this paragraph after service on him of:-
 - (i) a default notice or
 - (ii) a notice under Section 76 (1) or 98 (1); or
 - (c) In an action brought by a creditor or owner to enforce a regulated agreement or any security, or recover possession of any goods or land to which a regulated agreement relates,

the court may make an order under this section (a “time order”).
- 2) A time order shall provide for one or both of the following, as the court considers just:
 - (a) the payment by the debtor or hirer or any surety of any sum owed under a regulated agreement, or a security by such instalments, payable at such times, as the court, having regard to the means of the debtor or hirer and any surety, considers reasonable;
 - (b) the remedy by the debtor or hirer of any breach of a regulated agreement (other than the non-payment of money) within such period as the court may specify.

Section 136 (relating to power to vary agreements and securities)

The court may in an order made by it under this Act include such provision as it considers just for amending any agreement or security in consequence of a term of the order

COUNTY COURT FEES

DO I HAVE TO PAY A FEE FOR AN APPLICATION IN THE COUNTY COURT?

There will usually be a fee to pay with your application. You can ask the court not to pay the fee in some circumstances. The form you will need to fill in is called an **EX160 "Application for a fee exemption or remission."** This form needs to go to the court with your main application. If the court agrees your application you will not have to pay the fee. If you pay a fee when you should have been exempt or would have qualified for a remission, then you have six months to apply to the court for a refund.

EXEMPTIONS

If you are on income support or income-based jobseekers' allowance (JSA) you can ask the court for exemption from the fee. You need to give the court proof that you are getting the benefit. You will be exempt if you or your partner are on the guarantee credit element of pension credit.

If you are on working tax credit you will be exempt from the court fee in these circumstances:

if you are also on child tax credit,

or

you receive the disability or severe disability element in your working tax credit

and in either case

your gross annual income taken into account for working tax credit is £15,460 or less (from 6 April 2006).

You will need to show the court your tax credit award notice to qualify.

If you do not qualify under these rules for an exemption then you can ask for the fee to be remitted or waived by the court. **See below.**

REMISSIONS

Ask the court for the fee to be remitted (or waived) if it will cause you what the court calls "undue financial hardship". You can use the same **EX160** application form. You may be on a low income or a benefit that does not automatically exempt you from paying the fee. Give as much information about your circumstances as you can. Explain your financial situation on the application form and any exceptional circumstances that apply in your case. The court can remit all or part of the fee depending on what they decide you can afford.

REMEMBER: You can always contact us for advice about any difficulty you have in dealing with your debts.

Freephone: 0800 074 6918

Website: www.insolvencyhelpline.org

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Whilst we endeavour to keep our factsheets as up to date as possible, The UK Insolvency Helpline cannot be held responsible for changes in legislation or for developments in case law since this edition of the factsheet was issued.

IN THE

COUNTY COURT

IN THE MATTER OF AN APPLICATION FOR A TIME ORDER

Claim no.

Between _____

(Insert your full name in block capitals)

and _____

(Insert the full name in block capitals of the company to whom you make your payments)

1. (Name) _____

Of (Address)

apply to the court for a time order

2. The following are the details of the regulated agreement in respect of which I am asking for a time order.

a. The agreement is dated _____

and the reference number is _____

b. the names and addresses of the parties to the agreement are:

c. The names and address of the person (if any) who acted as surety

is _____

of

Applicant

Respondent

d. (Delete if not applicable) The rights and duties of the party named _____

at b. above passed to the respondent on _____ when (here give the reasons why you now regard the respondent as your creditor)

His address is

e. I signed the agreement at (here give the address of the shop or other place where you signed the agreement)

f. I agreed to pay instalments

of £ _____ a week a month

g. The unpaid balance due under the agreement is £ _____

or I do not know the unpaid balance

h. I am £ _____ in arrear with my payments.

or I do not know how much the arrears are.

i. On _____ the respondent served
on me:

- a default notice
- a notice given under section 76(1)
- a notice given under section 98(1)

or I attach a copy of the notice which the
Respondent served on me on _____

j. you should complete this section if you are applying for time to pay, if not cross it out.

My proposals for payment are £ _____

to clear the arrears (if any) and then by instalments of
£ _____

k. you should complete this section if you have failed to comply with the agreement in any
other respect.

I am in breach of the following provisions of the agreement:

And my proposals for remedying the breach(es) are as follows:

(Solicitor for the)

4. the names and addresses of the persons to be
served with this application are : (You must include
any sureties)

5. My address for service is:

6. Signed _____
(Solicitor for the) Applicant.

Dated _____

**3. I have answered the questions about my
financial circumstances set out in the schedule to
this application.**

N440 Schedule

SCHEDULE

- please write in black ink.

1. What is your occupation?

2. Your employer Name

Address

3. Money you receive (give average weekly figures)

Pay before deductions£

Overtime, bonuses, fees, allowances,
Commissions
£

Usual take home pay£
pensions£

State benefits£ Other income£

Contributions from your household£

4. If anyone depends on you financially, give their names and ages including any children.

5. How much rent or mortgage should you pay?
£

Is this weekly or monthly.

6. How much do you actually pay?£

7. What rates should you pay?£

Is this weekly or monthly

8. How much do you actually pay?£

Case Number	
In the	County Court
Applicant	
Respondent	

9. Do you have to pay under any Court Orders?

Please give details including name of court, case number, amount still owing and instalment you pay.

10. What other regular payments do you have to make (for credit, hire purchase etc?)

11. Give details of any other regular Expenses you wish to the court to take into account.

12. Are the goods in your possession?

Yes No

I understand that if the plaintiff accepts my offer of payments by instalments the Court will make an order for the return of the goods but the plaintiff will not be able to enforce this order so long as I pay the instalments punctually.

Application Notice



You should provide this information for listing the application

1. How do you wish to have your application dealt with

a) at a hearing? } *complete all questions below*
 b) at a telephone conference?
 c) without a hearing? *complete Qs 5 and 6 below*

2. Give a time estimate for the hearing/conference
 _____ (hours) _____ (mins)

3. Is this agreed by all parties? Yes No

4. Give dates of any trial period or fixed trial date _____

5. Level of judge _____

6. Parties to be served _____

In the YOUR COUNTY COURT	
Claim no.	YOUR CLAIM NUMBER
Warrant no. <small>(If applicable)</small>	
Claimant <small>(including ref.)</small>	CREDITOR
Defendant(s) <small>(including ref.)</small>	YOUR NAME
Date	DATE

Note You must complete Parts A and B, and Part C if applicable. Send any relevant fee and the completed application to the court with any draft order, witness statement or other evidence; and sufficient copies for service on each respondent.

Part A

1. Enter your full name, or name of solicitor I (We)⁽¹⁾ YOUR NAME (on behalf of) (the claimant) (the defendant)

2. State clearly what order you are seeking and if possible attach a draft ~~a draft of which is attached~~ that⁽²⁾
 The court reschedules payment of the sum owing to the creditor under s129 Consumer Credit Act 1974 at £..... per month by making a Time Order (and reduced/freezes interest and/or other charges accruing to the account under s1366CCA because⁽³⁾

3. Briefly set out why you are seeking the order. Include the material facts on which you rely, identifying any rule or statutory provision I can no longer afford the contractual instalments under the agreement due to loss of overtime and due to my wife having to reduce her working hours

Part B

I (We) wish to rely on: *tick one box*

the attached (witness statement)(affidavit) my statement of case

evidence in Part C in support of my application

4. If you are not already a party to the proceedings, you must provide an address for service of documents

Signed

(Applicant)(’s Solicitor)(’s litigation friend)

Position or office held

(if signing on behalf of firm or company)

Address to which documents about this claim should be sent (including reference if appropriate)⁽⁴⁾

YOUR ADDRESS	if applicable	
	fax no.	<input type="text"/>
	DX no.	<input type="text"/>
	e-mail	<input type="text"/>
Tel. no.	Postcode	<input type="text"/>

The court office at

is open from 10am to 4pm Monday to Friday. When corresponding with the court please address forms or letters to the Court Manager and quote the claim number.

Part C

Claim No.

I (We) wish to rely on the following evidence in support of this application:

At the time I entered the agreement I could afford the contractual instalments. I was working full-time with considerable overtime and my wife was working full-time.

However, last summer my overtime ceased and I had periods of short-time working due to lack of business. In addition, my wife had to reduce her hours of work to spend time with one of our children who was (and still is) ill at home.

I can, however, afford £..... per month for the time being. I attach our financial statement in support of this.

I am confident that my earnings will increase. My employer has told me business is improving and there should be overtime available in 6 to 12 months, at which time I will be able to resume payment equivalent to the contractual instalments and pay something towards the arrears.

Statement of Truth

*(I believe) *(The applicant believes) that the facts stated in Part C are true

**delete as appropriate*

Signed

(Applicant)(’s Solicitor)(’s litigation friend)

Position or office held

(if signing on behalf of firm or company)

Date

