



# Better off

West Lothian

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## Keeping your home

### Help with Debts including Court Action

The Advice Shop is a free, impartial and confidential service to help the people of West Lothian with a focus to alleviate poverty and to promote social inclusion and equality through advice, assistance and advocacy.



West Lothian  
Council

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## Paying your rent

It is important to maintain regular contact with your landlord or lender. Get in touch as early as possible when any issues arise.

## Rent

Do not let arrears build up. Contact your landlord to explain your situation. Make it a priority to update your Housing Officer on any issues as early as possible. Explain your situation and how this may affect your ability to pay your rent. For social housing tenants, your Housing Officer will welcome the early communication and be only too happy to offer advice and guidance. For private tenants, early contact with your landlord or their acting agent should be made as early as possible when issues arise.

Your circumstances may have changed. You may have had a drop in household income. Always make sure you get an up-to-date benefit health check carried out. The Advice Shop can help you with this. The benefit check will identify if you are entitled to any help towards your rent costs. You can get help with budgeting and money advice to support you.

## Mortgage

If you are falling behind with mortgage payments, inform your lender as soon as you become aware of any issues that could affect your ability to meet mortgage payments.

Discuss your options with your lender. They may be able to offer a payment holiday, or they can take reduced payments for a period until the crisis has been resolved.

If you have mortgage arrears, your lender can take you to court to repossess your home. There are rules that mean your lender can only do this as a last resort and after other options have been exhausted.



## Other unpaid debts

Creditors are entitled to contact you to collect unpaid debts, whether it is by letter, phone call or home visit. However, your creditors must act within the law when pursuing a debt you may owe to them.

If you owe money and do not pay it back, the creditors you owe money to may eventually take you to court. This is called making a claim.

If one of your creditors takes you to court, it is really important not to ignore the situation and to know what action you can take in response.

If you take action quickly, you can avoid the situation getting worse. If you do not take action, you could end up with a bigger debt, or even losing your home or your possessions.

Therefore early communication is very important and may mean the difference between going to court or not.





### Preparation for Court

#### Prior to Court

**You may be worried about attending court, particularly if you do not have a solicitor or other representative to speak for you. The following information may help you to prepare for your appearance.**

#### **Prepare for any court hearing as well as you can**

It will help you, and the court, if you have already thought about what you want to say in court. You should prepare your case as thoroughly as possible. Decide what papers or other items you wish to take with you to support your case.

#### **Make sure you know the date and time of any court hearing you are attending**

The calling date can be checked from the front page of the summons or copy summons which you will have. If you are in any doubt, contact the sheriff clerk. It will not help your case if you turn up on the wrong day, or at the wrong time, as the case will almost certainly be dealt with in your absence.

#### **Check the whereabouts of the court, and how to get to it**

If the court is situated in an unfamiliar town, make sure that you know the exact location of the court and how to get there. Find out about public transport to the court, or where you can park your car. If in doubt, you can telephone the sheriff clerk for assistance.

#### **Consider visiting the court in advance**

If you are worried about attending court, or are concerned about finding it, you may want to go there before the day of your case, to familiarise yourself with the layout of the building. Most courts have a reception point, and staff will be pleased to answer any questions about the courtrooms and other facilities.

## Allow yourself plenty of time to get to the court

If you are late the action, in all probability, will have been dealt with in your absence.



## Remember to bring any papers or items with you which might be useful

Examples of these might include:

- A copy of the summons or any response to it.
- Any letters, receipts, invoices or contracts which you may wish to refer to in court to support your case.

## Your defence and payment proposal

### Defence

Examples of issues that have arisen which can be used as a suitable defence include the following;

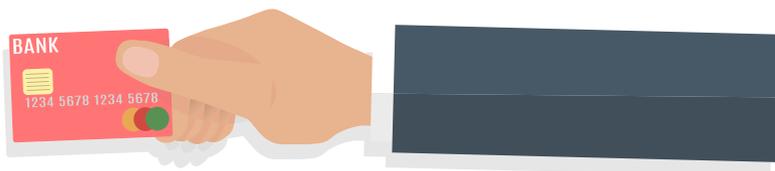
- Unemployment
- Reduced income
- Benefit issues
- Poor or failing health
- Bereavement

The above are some of the most common issues which impact on an individual's ability to keep up with payments to a debt.

### Proposal (Offer)

Any offer should cover the current payment plus a reasonable amount towards any arrears balance.

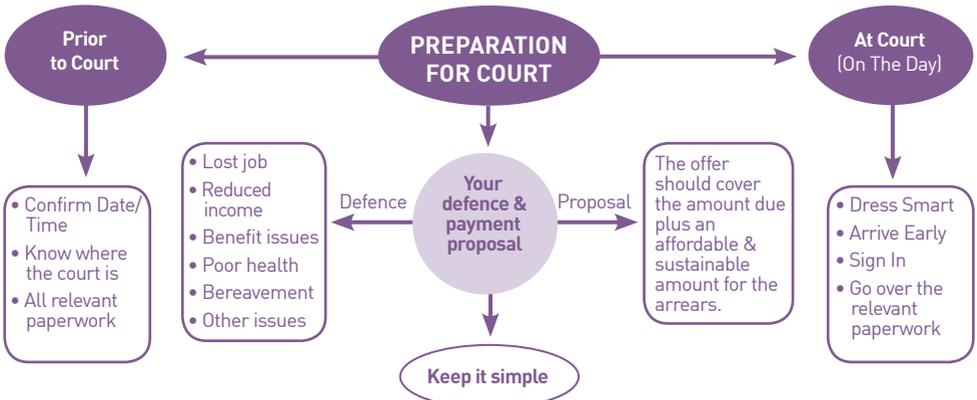
It is therefore important that you think about the current arrears balance in relation to your income. Any offer should be affordable and be comfortably maintained. It should ideally show that any arrears balance will be cleared in a reasonable and realistic time frame.



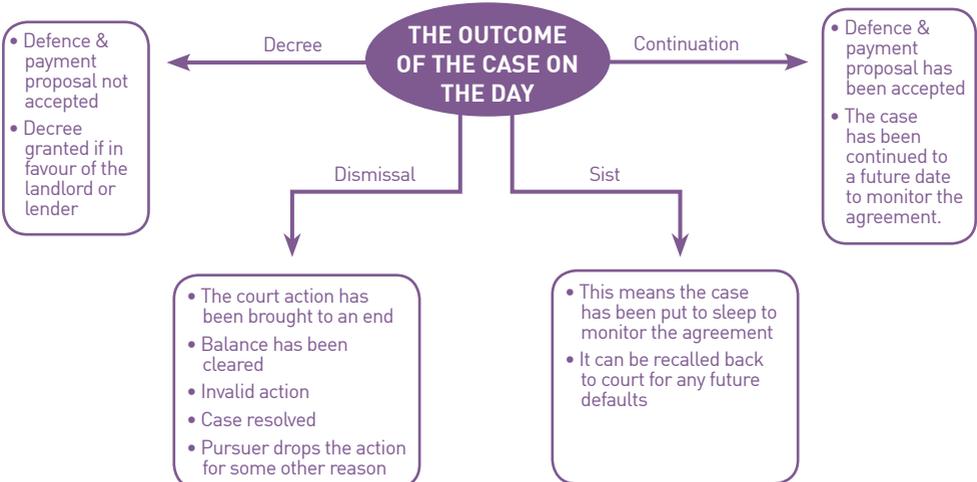
## Stage 1: Trying to stop a court action



## Stage 2: At court



## Stage 3: Understanding the court decision



# Representing yourself at Court

## Dress Code

Dress as smartly as you can for court. Wearing football colours or displaying offensive slogans mean you will not be permitted entry to the court.



## Arrive early

Arriving early will let you familiarise yourself with the court and its surroundings.

## Find out exactly where you have to go

When you arrive at the court, there will be a reception point at all but the smallest courts. If there is no receptionist available, you should go to the sheriff clerk's office for help as you must register your arrival.

## Be prepared for some delay

Please remember that courts can be very busy and that it is very difficult to forecast how long individual cases might take. This means that your case may not be called at the time stated. It can also be difficult to predict how long any hearing will last, once it gets underway.

You should therefore allow for delays, and arrange your affairs accordingly. Remember this if you leave your car at a parking meter!

It might be worth enquiring at the sheriff clerk's office, when you arrive at court, whether there is likely to be any delay to the start of your case.

## Review your documentation. Go over your defence and payment proposal.

If having arrived early at court and registered your attendance, then use this extra time to look over any supporting documentation. Read over your defence and payment proposal details.

# *“Keep it Simple”*

## **In the courtroom**

Make sure your mobile phone is switched off prior to entering the courtroom. You should take a seat in the courtroom until the clerk of court or court officer calls your case. When he/she does so, you should go forward and stand where they indicate.

## **Addressing the court**

The sheriff will give you some information about how the case will be conducted at the beginning of the hearing.

At various times during the hearing of the case, if you are representing yourself, the sheriff will invite you to address the court. You should not interrupt while others are speaking.

**Try to make your points clearly and simply. Do not talk about matters which are not relevant.**

Listen carefully to any instructions or explanations about procedure which the sheriff or the clerk of court may give you.

The sheriff is normally addressed as My Lord/Lady.

You will be known as the defender as you wish to defend this court action.

Your landlord/lender or creditor (or any agent on behalf of) will be known as the pursuer.

## **Future court attendances**

Sometimes, it may be necessary for the case to be continued to another date. Make sure you know any future dates when it would be difficult for you to attend.





**The sheriff's decision will normally be one of the following:**

### **Decree in favour of the landlord/lender or creditor.**

This means that the pursuer has been successful, either totally or partially, in the action. The court might then order you to pay any sum of money claimed, or comply with any other order sought by the pursuer.

However, 14 days are allowed for the unsuccessful party to appeal. A copy of the court's order authorising enforcement of the decision cannot be issued until that period has expired.

If no appeal is registered, the sheriff clerk will issue the pursuer with a document called an extract decree. This gives authority to enforce the decree if you do not comply with the terms. The extract decree contains details of the court's order, and will tell you about any date by which you are required to comply. If you have been allowed to pay by instalments, or by deferred lump sum, the extract decree will say when the first instalment (or the whole sum) must be paid.

If decree has been granted in a rent or mortgage case, then the landlord or lender can progress eviction or repossession action if you do not clear the decree amount. A decree for removal has a six months lifespan.

### **Continuation**

This means that the Sheriff has agreed to another hearing at a later date. This may be to allow for extra time to resolve outstanding issues alongside monitoring the agreed payment offer.

A request may be made before this next court hearing if the agreed payments are maintained and all other issues have been resolved. This request may be for a further continuation or sist (see below).

### **Sist**

If the agreement has been maintained from the first court hearing, and no other issues are outstanding, then at the next court hearing the case may be sisted. This means that the case will be taken off the court run in order to monitor the current agreement.

Should you default on any previous arrangement agreed in court, then this case can be recalled back to court and decree could well be the likely outcome this time round.

### **Dismissal of the action**

Once the arrears are cleared you can ask for the case to be recalled back in to court. You can ask for a dismissal of the action. This request can be carried out by contacting your housing office or lender.

#### **Useful Contacts:**

<b>Civil Legal Assistance Office</b>	<b>0131 240 1960</b>
<b>Shelter Scotland (9am-5pm Monday to Friday)</b>	<b>0808 800 4444</b>
<b>Livingston Sheriff Court</b>	<b>01506 402400</b>
<b>Scottish Legal Aid Board</b>	<b>0131 226 7061</b>
<b>West Lothian Council</b>	<b>01506 280000</b>



## Drop in Advice Shop

Bathgate Partnership Centre  
Lindsay House  
South Bridge Street  
Bathgate EH48 1TS

Mon - Thurs  
8.30am - 5pm

Friday  
8.30am - 4pm

Appointments available in various outreach locations

Tel: 01506 283000

Email: [advice.shop@westlothian.gov.uk](mailto:advice.shop@westlothian.gov.uk)

Outreach sessions – call us for details

[www.westlothian.gov.uk/advice-shop](http://www.westlothian.gov.uk/advice-shop)

Information is available in braille, tape, large print and community languages. Contact the interpretation and translation service on **01506 280000**.

Text phones offer the opportunity for people with a hearing impairment to access the council. The text phone number is **01506 591652**. A loop system is also available in all offices.

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