

# **Response to the Northern Ireland Funding Code Consultation Paper on the Proposed Criteria**

Issued by the Northern Ireland Legal Services Commission

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## **Introduction**

Housing Rights Service welcomes the opportunity to comment on the proposals for the Northern Ireland Funding Code criteria and procedures. Our response initially provides a brief overview of our services, concentrating specifically on housing debt advice and representation and then provides comment on the areas which we have identified as important and relevant to our work. The focus of our response is mainly on Help at Court, highlighting why we feel it is so important to allow funding for cases concerning the possession of a person's home as a consequence of arrears. Accompanying this response is a research paper which analyses the first six months of the Housing Rights Service Court Representation Service. The purpose of this research is to provide an evidence base into the impact of providing informal advocacy in mortgage repossession hearings.

## **Organisational background**

Housing Rights Service was established in 1964 and is the leading provider of independent specialist housing advice services in Northern Ireland. We believe everyone has the right to a decent safe affordable home. Our services include:

- Providing a housing advice line
- Undertaking advocacy and legal representation on behalf of people with housing problems
- Providing a specialist Mortgage Debt Advice Service pilot for people who face losing their homes through debt
- Providing online advice to the public through our website [www.housingadviceNI.org](http://www.housingadviceNI.org)
- Providing a specialist housing advice service within the prisons
- Delivering a skills and knowledge based training programme
- Producing information resources materials
- Supporting generalist advice agencies to deliver high quality housing in their local communities (in partnership with Citizens Advice and Advice)

- Providing client based commitment to influence the development of relevant public policy and legislation.

Overall, Housing Rights Service works to achieve positive change by protecting and promoting the rights of people who are in housing need in Northern Ireland. Our policy work is based on the experience of our clients and our work actively supports current government policy commitments in the broader areas of:

- Tackling Poverty and Promoting Social Inclusion
- Promoting Access to Social Justice
- Preventing Homelessness and Meeting Housing Need
- Promoting Equality and Better Relations
- Working in Partnership with the Voluntary Sector

Core services are funded by the Housing Division of the Department of Social Development.

### **Housing Debt Service**

Housing Rights Service has been involved in the provision of money advice and housing debt counselling since the early 1990s, when interest rates and the number of homes being repossessed were at record levels. Over the last few years, the organisation has witnessed unprecedented increased levels of demand advice from people in arrears including rent, mortgage and secured loan arrears. In 2008/09 demand increased by 300%. Housing Rights Service has also experienced the emergence of a new client profile using the service in addition to clients who are traditionally vulnerable to housing debt. Our Advisers have been witnessing increasingly more employed households who are facing possession action.

In 2008 there were 3628 mortgage possession actions taken in the Chancery Division of the Northern Ireland High Court. This reflects a 64% increase in the number received

during the same period in 2007. The first six months of 2009 show that 1974 actions were initiated locally. On a UK wide level, the Council for Mortgage Lenders is predicting that there will be around 65,000 actual repossessions by the end of the year.

### **Court representation service**

Earlier this year, in response to demand, Housing Rights Service launched the Preventing Possession Initiative. A key element of this project is an in-situ Court Representation Service for people facing the imminent threat of possession. For many years, Housing Rights Service has been aware of the large numbers of people who attend possession proceedings without representation. They often have not received any legal advice prior to their attendance at court. To address this Housing Rights Service, in liaison with the Northern Ireland Court Service, set up its Court Representation Service pilot with one full-time member of staff. This service, which is funded largely through charitable sources, seeks to ensure that homeowners and tenants who are threatened with debt related possession have access to free independent advice, support and representation on the day of their hearing. The Court Representation Officer is available at the Chancery Division of the High Court two days per week and the County Court one day every two weeks. The pilot is being facilitated by the NI Court Service at the Royal Court of Justice and Laganside Court in Belfast.

Recent research undertaken by Housing Rights Service into the Court Representation Service shows that between January and June 2009, ninety mortgage possession cases received assistance from the service. The analysis indicates that the Court Representation Officer was able to secure positive results and prevent possession in 74% of those cases that have outcomes. This has been achieved across the following outcomes: Suspended Possession Orders, Varied Suspended Possession Orders, General Adjournments and Enforcement Stayed. The analysis has also indicated that 159 people have been able to remain in their homes as a direct result of assistance and representation received through the pilot.

Homelessness has a devastating effect on people and their families, however, many people arrive at court without legal help. It is evident from the research into the first six months of the Court Representation Service that free legal representation at court can make a real difference in ensuring that repossession only ever happens as a last resort.

## **Comments on the proposals**

### **Chapter 2: The General Funding Code and Levels of Service**

Housing Rights Service is very disappointed that the NI Legal Services Commission (Commission) has reaffirmed that it does not propose to apply Help at Court as a discrete level of service. We do, however, welcome the Commission's intention to provide this service as a pilot. In doing so, the Commission has stated that it will enable mortgage repossession to be targeted specifically. Housing Rights Service is concerned about this approach and is unclear why tenants are not being afforded the same service as homeowners. It is our view that the scope of this service should be extended to also include possession cases involving social housing tenant arrears for the following reasons.

Housing Rights Service considers the loss of a social rented tenancy as a major factor in exacerbating a household's vulnerability to social exclusion. People who lose their social rented home are less likely to be rehoused in the social rented sector and therefore more likely to be faced with homelessness. We believe it is essential that funding is made available through the Commission for Help at Court in admitted debt proceedings to assist vulnerable people, who are often experiencing poverty, to remain in their homes. This in turn will be vital in assisting Government to meet the overall policy objectives of preventing homelessness and tackling social exclusion in Northern Ireland.

Housing Rights Service's experience has shown that people are more likely to retain their home if they have access to advice and representation at court, yet most people are not legally represented and often fail to turn up at court. In our view, this is partly because

legal aid is not available and people experiencing debt cannot fund representation themselves. Housing Rights Service research into the Court Representation Service shows that 68% of households who used the service (from January- June 2009) were in employment. However, if legal aid on a means testing basis was introduced to help homeowners in debt facing possession proceedings at court, the majority would not qualify for assistance (only 22% would be eligible). Clients also find the court room an extremely daunting experience. They can be vulnerable or in poor health and may not have the confidence to speak to the court especially under such stressful circumstances. At present we are unable to meet demand for the Court Representation Service as our capacity to do so is very much time limited. We currently have one staff member who is available only two days a week at the High Court and one day fortnightly at the County Court. We are however very successful in the cases we represent.

Our experience tells us that most people do not deliberately get themselves into a situation where they are threatened with the loss of their home because of arrears. There are almost always mitigating circumstances such as ill health, loss of employment, or reduced household income. Research analysis of our Court Representation Service, shows the overwhelming majority of households got into debt because of a crisis situation. This was often due to a temporary set of circumstances e.g. they were unable to work due to sickness or redundancy.

The Northern Ireland Executive has identified tackling poverty and social exclusion as key policy areas and affirmed its commitment in the published strategy 'Lifetime Opportunities'. Homelessness and its prevention have been prioritised within the wider policy objective of Promoting Social Inclusion. The Commission itself, by virtue of Article 12 of the Access to Justice Order 2003, must set priorities for the provision of civil legal services in accordance with any Directions that the Lord Chancellor may issue. The Commission proposed in its earlier exposure document on the Code that priorities might be similar in substance to those set out in the Funding Code of the Legal Services Commission in England and Wales. Cases given top priority in England and Wales

include help with social welfare issues that will enable people to avoid or climb out of social exclusion, including help with housing proceedings. The Legal Services Commission funds schemes to enable people in danger of eviction or having their property repossessed to get free legal advice and representation, regardless of their income, on the day of their hearing. Housing Rights Service acknowledges that Commission, in recognition of the Lord Chancellor's funding priorities, is in the process of determining the necessary measures that could facilitate the authorising of funding specifically in mortgage repossession cases. We would like the Commission to clarify the necessary measures required to facilitate the funding of a pilot and would welcome information regarding the timescale for introduction.

### **Cost benefits of funding court representation schemes to prevent homelessness**

A report by the UK Government considers the cost effectiveness of preventative schemes<sup>1</sup>. It acknowledges that homelessness gives rise to very significant costs to public services. The report's conclusions support the need for investment in homelessness prevention indicating that "investment can be highly cost effective" resulting not only in a better quality of life for people facing homelessness, but also real cost benefits to the public purse. It cites that as a result, substantial savings can be made in relation to:

- temporary accommodation costs while assessing homeless applications and/or waiting to be housed in a suitable tenancy;
- staff costs involved in assessing and monitoring homelessness applications;
- costs in rent arrears written off, legal fees, void re-servicing costs, void rent loss resulting from preventable evictions of social tenants;
- housing Benefit subsidy costs;
- costs to health, education and social services that can arise as a result of additional service due to homelessness.

Housing Rights Service believes there are real cost benefits to funding the defense of repossession cases. Unfortunately, we are not in a position to carry out this level of detailed analysis locally. Housing Rights Service, however, has carried out some analysis on data provided by the Northern Ireland Housing Executive (NIHE) for 2008/09. The figures provided relate to those households (4386) that were assessed under homelessness legislation and as a result were owed a duty by the NIHE to provide temporary accommodation. Temporary Accommodation costs associated with these households equated to £11 million in 2008/09. It must also be considered that a further £19 million had to be made available from the Supporting People Fund. On this basis Housing Rights Service estimates that the cost associated with the NIHE exercising its duty to homeless households, in terms of providing temporary accommodation, at £6840 per case. It must also be noted that this is a conservative estimate as it only includes those that have been temporarily accommodated by the NIHE as a result of their statutory duty and does not include homeless persons who are living in temporary accommodation and receiving housing benefit for this accommodation. Also, the figures do not reflect the associated administrative costs. Subsequently, the exact cost of homelessness is not known.

It is well documented that homelessness does give rise to very significant costs to public services. The UK Government recognises that these take the form of direct costs, such as the provision of accommodation, and indirect costs for example, the

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<sup>1</sup> Pawson H et al, *Homelessness Prevention a Guide to Good Practice*, Department for Communities and Local Government , June 2006

additional use of health services.<sup>2</sup> However, because most public services do not keep precise records about the amount of resources dedicated to homeless service users it is difficult to give a true reflection of the costs involved.

## NI Funding Code Criteria

### Section 7 – Judicial Review Criteria

#### 7.2.3 Administrative procedures

In its response to the previous funding code consultation, Housing Rights Service expressed the view that it would not be appropriate in all cases to require applicants to exhaust the Commissioner for Complaints/Assembly Ombudsman's scheme for housing issues. To reiterate our concerns, the Commissioner for Complaints/Assembly Ombudsman's remit in Northern Ireland is limited to cases involving maladministration, for example, procedural issues and delays etc. Additionally, this office deals with complaints relating to all government departments and public services. This does not reflect the situation in England where there is an independent Housing Ombudsman, as well as Local Government Ombudsman. According to the NI Ombudsman's website he "...would generally not investigate your complaint if:

- The action complained of took place more than 12 months ago;
- You could take your case to tribunal;
- You could go to court;
- It is about government policy or the content of legislation; or
- "I believe the action or decision you are complaining about was in fact reasonable"

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<sup>2</sup> Department for Communities Local Government, *Homelessness Prevention: A Guide to Good Practice*(June2006)

For these reasons we do not feel it would be appropriate to require clients to exhaust this scheme before applying for funding. Housing Rights Service would like this to be reflecting in the final criteria.

## **Section 10 – Housing Criteria**

### **10.1 Scope**

Housing Rights Service welcomes the Commission's decision to extend the definition of housing to include proceedings which concern the client's legal status in the home. Housing Rights Service identified this as an important area, particularly in relation to cases involving trespass and in determining tenancy rights in the private rented sector i.e. distinction between leases and licences.

Housing Rights Service has brought to the Commission's attention (through the last consultation exercise) the likelihood of a new right of appeal of a homelessness decision to the County Court. This recommendation was made in the Promoting Social Inclusion report "Addressing the Causes and Effects of Homelessness in Northern Ireland" (2004) and is now contained in Clause 5 of the Draft Housing (Amendment) Bill (currently at Consideration Stage).

Clause 5,

*11C. - (1) if an applicant who has requested a review under Article 11A —*

- (a) is dissatisfied with the decision on the review, or*
- (b) is not notified of the decision on the review within the time prescribed by regulations under Article 11B, the applicant may appeal to the county court on any point of law arising from the decision or, as the case may be, the original decision.*

This Bill is likely to receive Royal Assent in 2010. It is therefore important that the criteria are amended to cover such cases.

## 10.3 Criteria for Full Representation – Possession Cases

### 10.3.2 Prospects of Success

With regard to the likelihood of full representation being refused “where there is no substantive legal defence to the proceedings or where the prospects of successfully avoiding an order for possession are poor”, Housing Rights Service would again recommend that this should be amended to read “...*where the prospects of successfully avoiding an order for outright possession are poor.*”

## Consultation on proposed procedures

### Chapter 6: Contracting under the Funding Code

Housing Rights Service supports the Commission’s intention to develop a mixed model in the provision of publicly funded legal services, through which advice and assistance can be provided by a trained, knowledgeable competent person in a community/voluntary organisation. Housing Rights Service seeks clarification from the Commission regarding how it will determine the credentials of a potential alternative provider. We recommend that any contracting arrangements are quality assured on the basis of benchmarking providers against recognised quality standards such as Lexcel or the Legal Services Quality Assurance System.

### Summary

Housing Rights Service remains of the view that Help at Court should be introduced as a level of service. Nonetheless, we welcome the Commission’s intention of bringing forward a pilot Help at Court scheme. Housing Rights Service would also like to see the scope of the service extended to cover rent arrears. Furthermore, in bringing forward the necessary framework to ensure funding is made available, Housing Rights Service urges the Commission to mirror the arrangements that are in place in England and Wales. In other words, that legal aid funding is made available for housing debt possession cases on a non means tested basis. Parity, between the two jurisdictions, will enable people in

Northern Ireland facing housing debt possession proceedings to have to access to similar advice and representation to help them to retain their homes.

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**For further information contact:**

Jim O'Callaghan (Head of Operations)

Tel: 028 90267924 or Email [jim@housingrights.org.uk](mailto:jim@housingrights.org.uk) or

Fiona Douglas (Policy Officer)

Tel: 028 90267926 or Email [FionaD@housingrights.org.uk](mailto:FionaD@housingrights.org.uk)