



Middleton Buildings

10-12 High Street

BELFAST

BT1 2BA

[www.housingrights.org.uk](http://www.housingrights.org.uk)

# **Research Paper**

## **Preventing Possession Initiative:**

### **Analysis of the Court Representation Service for Mortgage Possession Proceedings in Northern Ireland**

**Research Period: January to June 2009**

October 2009

## **Executive Summary**

In 2008 there were 3,628 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 possession actions were initiated. In response to this growing demand, Housing Rights Service launched the Preventing Possession Initiative early in 2009. The project, which is funded mainly through charitable sources, aims to prevent possession as a consequence of housing debt related possession action. A key element of this initiative is an in situ Court Representation Service for people facing the imminent threat of repossession. This service seeks to ensure homeowners and tenants who are threatened with possession have access to free independent advice, support and representation on the day of their hearing.

In England and Wales, legal aid is available for similar schemes (often referred to as 'Help at Court') where the client is a defendant to possession proceedings and rent and mortgage arrears are not in dispute. This is currently not available in Northern Ireland. However, the Northern Ireland Legal Services Commission has been seeking views on a Funding Code for legal aid services and is considering a pilot scheme locally.

Housing Rights Service strongly believes that good quality advice and representation can have a profound impact on a person's ability to remain in the home, even when facing possession proceedings. In our view, investing in the prevention of homelessness makes economic sense with potential savings to be made across government departments.

Homelessness gives rise to very significant costs to public services. These take the form of direct costs, such as the provision of accommodation and indirect costs, such as the impact on health, society and the economy. Figures provided by the Northern Ireland Housing Executive (NIHE) for 2008/09 provide some insight into these direct costs. With regard to supported temporary accommodation costs for homeless households who are owed a duty by the NIHE, Housing Rights Service estimates this at

approximately £6,840.00 per household. By comparison, the cost of advice and representation under Housing Rights Service's Court Representation Service averages at £222.00 per household. The average cost per person in each household is £68.00.

What is harder to quantify is the human and emotional cost of stress caused by debt. Severe financial pressure can lead to ill health, loss of employment and family break-up. Greater levels of financial support will be required, for example, to provide social security benefits or to cope with the additional pressures on health and social services. It is in the interest of the public purse that resources are made available to assist homeowners and tenants to sustain their current accommodation, where possible, and avoid becoming homeless. It is Housing Rights Service's view that this should include good quality housing debt advice and assistance with court representation costs.

This paper analyses through a file survey the household profiles of the 90 cases which have used Housing Rights Service's Court Representation Service in the first six months of its operation. It also details the outcomes of proceedings and examines the cost benefits of this work. The file survey contains information gathered from 90 case files of clients who both attended their mortgage possession hearings at the Chancery Division of the High Court and also engaged with the Court Representation Service. It should be noted that the Court Representation Officer is present only two days a week to provide this service.

At present, there is no accessible way of quantifying either the number of people who fail to turn up at court or those who do turn up, but are unrepresented. The issue of measuring unmet is something which Housing Rights Service is currently exploring in conjunction with the Northern Ireland Court Service.

## Key Findings

1. Homelessness was prevented in the vast majority of cases with outcomes (74%), meaning that 159 people were able to remain in their homes as a result of direct intervention by the Court Representation Officer.
2. A small number of Possession Orders were granted (17% of cases). However, in over half of these cases the homeowners were unable to make a repayment proposal and, as negative equity was present, there was limited scope to prevent possession orders.
3. In the vast majority of cases (78%) the homeowners had not received any previous advice about their housing debt situation.
4. A substantial proportion of people who engaged with the Court Representation Service (68%) were in paid employment (49% full time). This shows the emergence of a new client profile in addition to those who would traditionally have been considered vulnerable to debt problems.
5. The majority of households facing possession had children living in the property (73% of cases). In half of these cases (51%) the household comprised a couple with children with 22% being lone parents.
6. If legal aid on a means testing basis was introduced to help homeowners in debt who are facing possession proceedings at court, the majority would not qualify for assistance (only 22% would be eligible - Table 1 of the Annex).

## 1.0 Introduction

This paper sets out the research undertaken by Housing Rights Service into the first six months of its Court Representation Service, provided as part of the Preventing Possession Initiative. The period under review is January to June 2009. The purpose of this research is to provide evidence of the impact of providing informal advocacy in mortgage possession hearings.

Homelessness has a devastating effect on families and individuals, yet the majority of people in mortgage possession proceedings arrive at court without legal help. By conducting this research and reporting on its findings, Housing Rights Service aims to illustrate how free legal advice and representation at court can make a significant and positive difference in ensuring that homelessness is prevented. This service is currently being provided without public funding. With no sign of demand waning, Housing Rights Service is concerned that limited resources for its Court Representation Service, the only one of its kind in Northern Ireland, could quickly be outstripped by demand.

In England and Wales, legal aid is available for similar schemes (often referred to as 'Help at Court') where the client is a defendant to possession proceedings and rent and mortgage arrears are not in dispute. This paper compares the situation in England and Wales with regard to the provision of legal aid funding, and the volume of mortgage repossession actions to the situation in Northern Ireland. It also provides cost benefit analysis of the Court Representation Service undertaken by Housing Rights Service based on costs provided by the Northern Ireland Housing Executive (NIHE).

The NI Legal Services Commission has recently been seeking views on a Funding Code for legal aid cases locally. Housing Rights Service has highlighted in its response the pressing need for legal aid funding of arrears possession proceedings in Northern Ireland to be placed on a par with that in England and Wales.

## 2.0 Background

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 levels of demand for this service. This has been due to an increase in the number of possession actions.

Table 1 indicates that mortgage repossession actions in Northern Ireland have increased at an alarming rate in 2008 compared with 2007 levels. This peaked at 93% in the third quarter of 2008; and the overall percentage increase for 2008 compared to 2007 was 64%.

	Volume – Mortgage Possession Actions	% Increase from same quarter 2007
Q1 2008	754	33%
Q2 2008	929	59%
Q3 2008	1006	93%
Q4 2008	939	71%

In 2008/09 demand for Housing Rights Services housing advice debt advice service increased by 300%.

In response to demand, earlier this year Housing Rights Service launched the Preventing Possession Initiative. Central to this project is the in situ Court Representation Service, the only one of its kind in Northern Ireland, for people facing the imminent threat of repossession. Housing Rights Service has been

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<sup>1</sup> Northern Ireland Court Service – quarterly reports

aware for many years that a significant proportion of people attend possession proceedings without representation, often having received no legal advice prior to appearing at court. To address this Housing Rights Service, in liaison with the Northern Ireland Court Service, set up the Court Representation Service with one full-time member of staff. This service 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 pilot is being facilitated at the Royal Courts of Justice and Laganside Court in Belfast.

When comparing the situation to that in England and Wales, Table 2 indicates that the volume of mortgage repossession actions in England and Wales has not reached the % level increase that has been experienced in Northern Ireland.

<b>Table 2: Volume of Mortgage Repossessions by Quarter and % Increase – England and Wales<sup>2</sup></b>		
	Volume – Mortgage Possession Actions	% Increase from same quarter 2007
Q1 2008	36,688	16%
Q2 2008	39,078	17%
Q3 2008	38,511	9%
Q4 2008	26,008	-27%

The Legal Services Commission, which operates the legal aid system in England and Wales, funds schemes so that anyone in danger of eviction or of having property repossessed can get free legal advice and representation on the day of their hearing, regardless of their income<sup>3</sup>. Almost 34,000 households across England and Wales used this service in 2008, an increase of more than 5,000 compared to 2007. Since April 2005, more than 100,000 households have used the service. By

<sup>2</sup> Ministry for Justice – Court Statistics, quarterly reports

<sup>3</sup> Ministry of Justice Press Release: 21 April 2009

comparison, Northern Ireland is experiencing a complete lack of public funding to resource similar initiatives, despite having a higher percentage level of demand.

### 3.0 Methodology

A data report was obtained from Housing Rights Service's database of all cases that had accessed the Court Representation Service at the Chancery Division of the High Court between January and June 2009. The dataset was examined and from this it was evident that in total the Court Representation Officer had dealt with 90 cases during this period.

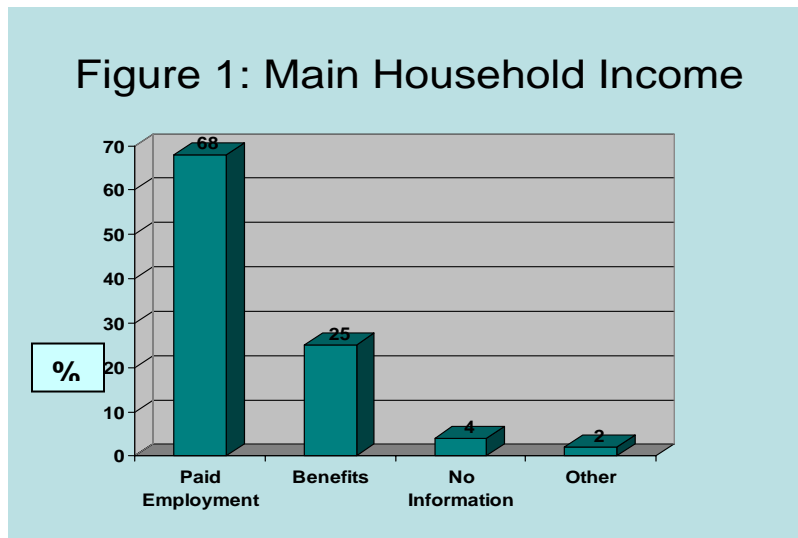
<b>Table 3: Status of PPI Files</b>			
	<b>PPI concluded cases</b>	<b>PPI active cases</b>	<b>Other</b>
<b>Volume of cases</b>	<b>68</b>	<b>19</b>	<b>3</b>

In terms of the status of the 90 cases, Table 3 indicates that 68 cases were concluded fully, 19 were still active and 3 had secured an outcome in relation to the mortgage, but action in relation to the secured loan was ongoing, or vice versa. An examination of information in these types of proceedings was conducted through a file survey that captured both qualitative and quantitative data.

## 4.0 Results and Findings

### 4.1 Main Household Income

Figure 1 indicates that in the majority of cases (68%) the main household income of those in housing debt was from paid employment. Analysis also indicates that 25% were in receipt of benefits. In 4% of cases the information was not available.



This analysis indicates that a significant proportion of those who engaged with the Court Representation Service (68%) had an income from paid employment.

## 4.2 Personal Status

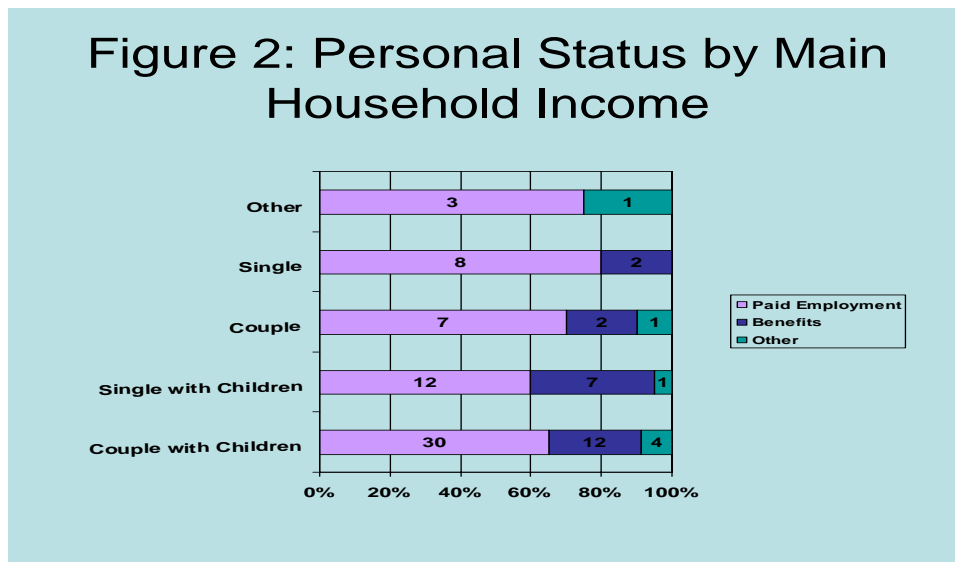
Analysis of information regarding personal status (Table 4) indicated that 51% of cases were a couple with children; 22% were single with children; 11% were single and a further 11% were part of a couple.

<b>Table 4: Personal Status</b>		
<b>Personal Status</b>	<b>Volume of cases</b>	<b>% of Cases</b>
Couple with Children	46	51 %
Single with Children	20	22 %
Couple	10	11%
Single	10	11%
Other	2	2%
No information	2	2%
<b>n=90 cases</b>		

It is therefore evident that the majority of households (73%) facing possession had children living in the property.

## 4.2.1 Personal Status by Main Household Income

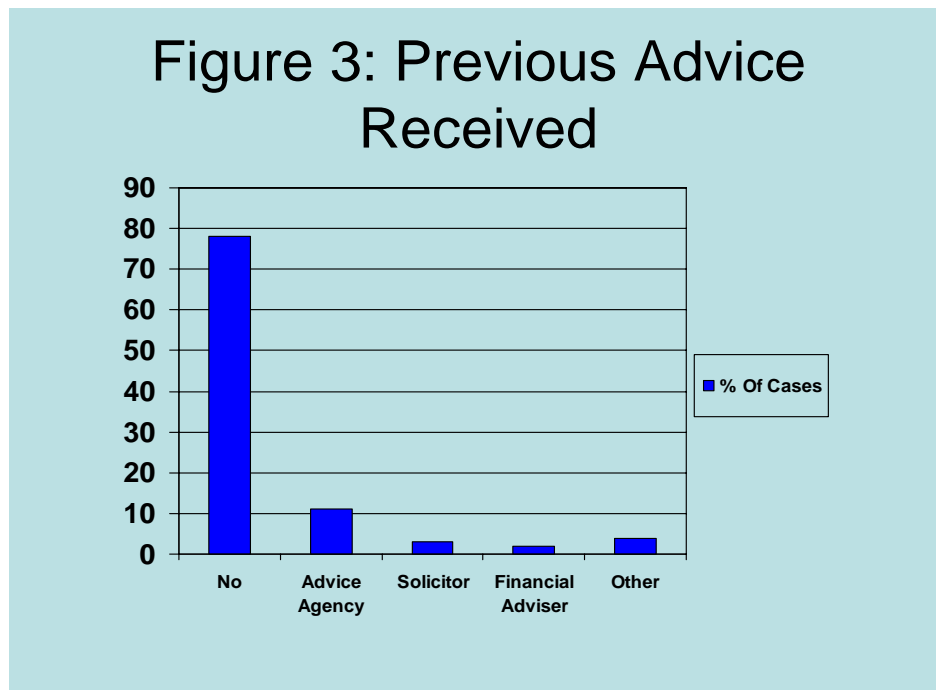
Analysis of the personal status of each household by the main household income (Figure 2 below) indicated that in 33% (30 out of 90) of cases where the personal status involved couples with children the main household income came from paid employment. In 13% of cases where the household comprised single parents, the main household income came from paid employment. In 8% of cases where the personal status involved single people, the main household income was from full time employment.



The experience of Housing Rights Service is that those people, who are more vulnerable to housing debt, tend to be low income and/or single parent households. Housing Rights Service through its Court Representation Service, has witnessed the emergence of an additional client profile. Figure 2 indicates that it is no longer only low income or single parent households who are particularly vulnerable to housing debt. The analysis indicates that in all categories of personal status, the main household income was from paid employment. Quite a large proportion (33%) of cases in paid employment pertains to households consisting of couples with children.

### 4.3 Previous Advice Received

Analysis of whether the clients had received any previous advice before engaging with the Court Representation Service was also undertaken. Figure 3 (below) indicates that 78% had not received previous advice; 12% had received advice from an advice agency; 3% had received advice from a solicitor and 2% had received advice from a financial adviser.



Analysis indicates that in the vast majority of cases (78%), homeowners are arriving at court for possession proceedings with no previous advice about their housing debt situation.

#### 4.4 Reasons for Arrears

Table 5 considers the reasons for arrears, as provided by the clients themselves. In 28% of cases there was a loss of employment. In 20% of cases ill health was cited as the reason for arrears. In 16% of cases a reduction in income was attributed to the cause of arrears and in 12% of cases no information provided. In 11% of cases arrears were attributed to relationship breakdown and in 2% of cases problems with selling the house were cited.

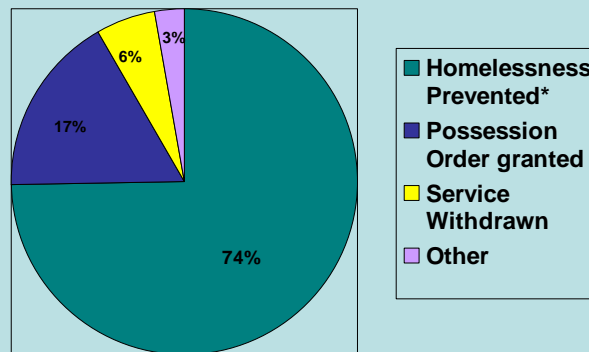
<b>Reason for Arrears</b>	<b>Volume of Cases</b>	<b>% of cases</b>
Loss of employment	25	28%
Ill Health	18	20%
Reduced Income	14	16%
No information	11	12%
Relationship breakdown	10	11%
Other*	10	11%
Sale of house fell through	2	2%
<b>n=90 cases</b>		

\*Other reasons include: bereavement, change in bank arrangements, fixed rate expired etc.

## 4.5 Proceedings Outcomes

To analyse outcomes, we firstly considered only those cases that had outcomes (71). The outcomes have then been grouped according to those which were successful in preventing possession (i.e. Suspended Possession Order, Varied Suspended Order, Adjourned Generally and Enforcement Stayed), those where possession was granted (Possession Order), those where the service was withdrawn and those with other outcomes.<sup>4</sup> Figure 3 (below) indicates that homelessness was prevented in 74% of cases and that Possession Orders were granted in 17% of cases. The service had to be withdrawn in 6% of cases and 3% had other outcomes.

Figure 4: Proceedings Outcomes



\*3 cases included in this figure relate to cases in which there has been a conclusion in relation to one element of possession action and the other is ongoing, e.g. suspended order granted in relation to mortgage but secured loan ongoing.

In considering the level of Possession Orders granted it must be noted that in more than half of the cases there were no repayment proposals and the properties were in negative equity. In such circumstances a Possession Order is normally the most likely outcome.

<sup>4</sup> Other outcomes relate to; house voluntarily sold and voluntarily surrendered possession.

With regard to the number of people who were able to remain in their homes as a result of the service, Table 3 in the Annex indicates that 159 people were prevented from being made homeless. This has been calculated on the basis of the positive outcomes of: suspended possession order; adjourned generally; varied suspended possession order and enforcement stayed. (The detail of proceedings outcomes is provided in Table 6 of the Annex.)

## **4.6 Case Studies**

### **Case study 1 – Mr A, loss of employment**

Mr A, a lone parent with two teenage children, lost his full-time job. At around the same time, Mr A's marriage broke down and he subsequently fell into mortgage arrears. Mr A's lender initiated possession proceedings on the basis that he had accrued arrears of just over £3,200. Mr A also had a secured loan on the property, but believed that his Payment Protection Insurance (PPI) would cover this.

On the day of his hearing, Mr A had no legal representation and was approached by Housing Rights Service's Court Representation Officer (CRO). Mr A advised the CRO that he had applied for Income Support for Mortgage Interest (ISMI) and was informed by the Jobs and Benefits Agency that he would not be entitled to assistance with housing costs until a period of 39 weeks had lapsed.

In court, the CRO obtained an adjournment to allow sufficient time to liaise with the Benefits Agency, to draw up a financial statement and to negotiate with the lender. The CRO contacted the Benefits Agency and advised of the recent changes to waiting periods for ISMI. She also contacted the lender to request a conversion from repayment mortgage to interest only. Subsequently, the CRO secured a Suspended Possession Order, enabling Mr A and his children to remain in their home.

A short time later, the insurance company refused to pay out the PPI for Mr A's second charge loan. Arrears accrued to just over £1400. The CRO represented Mr A at a further court hearing and was able to obtain a Suspended Possession Order in relation to the second charge.

### **Case study 2 – Mr & Mrs B, house sales scheme purchasers**

Mr & Mrs B were former Housing Executive tenants who purchased their home under the House Sales Scheme. Both clients at this time were in receipt of social security benefits. The clients stated that they had got the mortgage through a broker who had asked them to sign forms which she took away to complete. The clients got into difficulties very quickly after obtaining their mortgage and went back to the same broker who arranged a further loan for a higher amount. This cycle continued as the clients re-mortgaged a number of times. During this period, Mr B suffered serious health issues and this put a strain on their marriage. The clients separated for a period of time. Due to the arrears that had accrued, their lender initiated possession action.

The Court Representation Officer (CRO) initially obtained an adjournment. The CRO investigated whether the clients should be entitled to assistance with housing costs through Income Support. It transpired that they had applied before and were refused on the basis that they were not entitled to assistance. The CRO disputed this with Benefits Agency who agreed to consider Mr and Mrs B's case. Subsequently, they overturned their original decision. The assistance with housing costs was backdated and paid to the lender. There was no need for a court order to be made in this case as the arrears were fully discharged.

### **Case study 3 – Mr & Mrs C, self employed with health problems**

Mr and Mrs C have one child. Mr C was self employed and Mrs C was in full time employment. Arrears in this case accrued when Mr C became ill and was unable to work. After Mr C recovered, he undertook two part time jobs as he was unable to continue with self employment. Their lender initiated possession action on the basis that arrears were in excess of £5,500. The Court Representation Officer (CRO) at Housing Rights Service obtained an adjournment. This allowed time to conduct a financial statement and to enable Mr C to look at his options. At this stage he was considering bankruptcy for business debts.

On completing the financial statement, the CRO put forward a proposal to the lender for the monthly instalment and a small amount towards the arrears. This proposal was accepted by the lender and a Suspended Possession Order was granted on the terms agreed. Mr C has remained in employment and the clients have been able to maintain their payments.

## 5.0 Cost Benefit Analysis

Housing Rights Service has carried out analysis on data provided by NIHE for 2008/09. The figures relate to those households (4,386) who were assessed under homelessness legislation and, as a result, were owed a duty by the NIHE to provide temporary accommodation<sup>5</sup>. Temporary accommodation costs associated with these households equated to £11 million in 2008/09. A further £19 million was also made available to fund associated support costs (from the Supporting People fund). On this basis, Housing Rights Service estimates that the costs of providing and supporting temporary accommodation to homeless households at approximately £6840.00 per household. This, however, is a conservative estimate. It should be noted that it does not include homeless individuals and families who are not placed directly by NIHE in temporary accommodation (i.e. self referrals). Not all homeless people are owed a statutory duty to temporary accommodation. In these cases individuals and families can go directly to temporary accommodation and may receive housing benefit to cover the costs. Also, these figures do not reflect the associated administrative costs. Subsequently, the exact cost of homelessness in Northern Ireland is not known.

It is, however, 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 additional use of health services.<sup>6</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.

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<sup>5</sup> Housing (NI) Order 1988

<sup>6</sup> Department for Communities Local Government, *Homelessness Prevention: A Guide to Good Practice* (June 2006)

As part of this research, Housing Rights Service examined the cost of representation under the Court Representation Service. This averages, on a case basis, at £222.00<sup>7</sup>. In terms of the number of people in each household, the cost averages at £68.00<sup>8</sup>.

Housing Rights Service has long advocated for investment in prevention of homelessness. In our view, it makes economic sense to assist homeowners and tenants to remain in their current accommodation where possible thereby avoiding both the human and financial cost of homelessness.

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<sup>7</sup> Calculated on the basis of 90 cases from a budget of £20,000 for the six month period.

<sup>8</sup> Calculated on the basis of 291 persons assisted from a budget of £20,000 for the six month period.

## 6.0 Conclusion

This research highlights that the first six months of Housing Rights Service's Court Representation Service have been greatly successful in terms of preventing homelessness. The analysis indicates that in 74% of cases with outcomes, homelessness was prevented, meaning that 159 people were able to remain in their homes as a result of direct intervention by the service.

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 that free legal representation at court can make a real difference in ensuring that repossession is only ever used as a last resort.

In Housing Rights Service's experience, traditionally those vulnerable to housing debt are low income and single parent households. The Court Representation Service has highlighted the emergence of an additional client profile experiencing housing debt. It is no longer only low income or single parent families that are vulnerable to debt. The analysis indicates that 68% of cases that engaged with the Court Representation Service were in paid employment. In terms of the analysis of personal status by main household income, the highest proportion (33%) represented households where the main household income was from paid employment and the household was made up of couples with children.

Housing Rights Service's experience demonstrates that good quality advice and representation can have a profound impact on a person's ability to remain in the home, even when facing possession proceedings. In our view, investing in the prevention of homelessness makes economic sense with potential savings to be made across government departments.

Housing Rights Service believes there is a strong case for publicly funding this type of work. In its response to the Northern Ireland Legal Service Commission's consultation on the Funding Code, Housing Rights Service has highlighted the pressing need to put in place the necessary framework that will ensure the availability of legal aid funding for court representation in possession proceedings.

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**Further information about this research is available from:**

Housing Rights Service  
Middleton Buildings  
10-12 High Street  
Belfast, BT1 2BA

Tel: 028 90245640  
[www.housingrights.org.uk](http://www.housingrights.org.uk)  
[www.housingadviceNI.org](http://www.housingadviceNI.org)

Fiona Douglas  
Policy Officer (Housing)  
Tel: 028 90267926  
Email: [fionaD@housingrights.org.uk](mailto:fionaD@housingrights.org.uk)

Nicola McCrudden  
Policy & Communications Manager  
Tel: 028 90267919  
Email: [nicola@housingrights.org.uk](mailto:nicola@housingrights.org.uk)

Table 1 Main household income		
Main household income	Volume of cases	% of cases
Employed Full time	44	49%
In receipt of benefits	23	25%
In receipt of qualifying benefits	20*	22%
Employed Part time	9	10%
Self employed	7	8%
Employed 30 hours	1	1%
No information	4	4%
Other	2	2%
<b>n=90</b>		

\*qualifying benefits for the purposes of legal aid are income support, Income based JSA and Income based ESA and pension credit. In terms of ESA It was difficult to ascertain which of our clients are in receipt of income based ESA, this figure should therefore be considered with caution.

Table 2: Personal Status by Main Household Income										
Personal Status	Employed full time		In receipt of benefits		Employed part time		Self employed		other	
	Couple with Children	21	23%	12	13%	4	4%	5	6%	4
Single with Children	8	9%	7	8%	4	3%	0	0%	1	1%
Couple	5	6%	2	2%	1	1%	1	1%	1	1%
Single	7	8%	2	2%	0	0	1	1%	0	0%
Other	2	2%	0	0%	0	0	0	0%	0	0%
No information	1	1%	0	0%	0	0	0	0%	1	1%
<b>n=90 cases</b>										

<b>Table 3: Proceedings Outcome, Volume and % of Cases</b>		
<b>Proceedings outcome</b>	<b>Volume of cases</b>	<b>%of cases</b>
Suspended Possession Order	42*	47%
Adjourned	19	21%
Possession Order Granted	12	13%
Adjourned Generally	5	6%
Service withdrawn	4	4%
Varied Suspended Possession Order	3	3%
Enforcement Stayed	3	3%
Other	2	2%
<b>n=90</b>		

\* 3 cases included in this figure relate to cases in which there has been a conclusion in relation to one element of possession action and the other is ongoing, e.g. suspended order granted in relation to mortgage but secured loan ongoing.

<b>Table 4: Previous Advice Received, Volume and % of Cases</b>		
<b>Previous Adviser</b>	<b>Volume of cases</b>	<b>%of cases</b>
No	70	78%
An advice agency	11	12%
Solicitor	3	3%
Other	4	4%
<b>n=90 cases</b>		

<b>Table 5: Proceedings Outcome, Volume and Number in household</b>		
<b>Proceedings outcome</b>	<b>Volume</b>	<b>Number in household</b>
Homelessness Prevented	53*	159
Possession Order Granted	12	45
Service Withdrawn	4	12
Other	2	5
<b>n= 71 cases</b>		

\* 3 cases included in this figure relate to cases in which there has been a conclusion in relation to one element of possession action and the other is ongoing, e.g. suspended order granted in relation to mortgage but secured loan ongoing.