

Good Practice Briefing Paper: Mortgage Rescue and Flexible Tenure Schemes

This briefing paper examines the rationale behind mortgage rescue schemes. It highlights the risks associated with private companies and outlines the advantages of some not for profit schemes operating in Britain. It also offers recommendations and highlights areas of good practice. Housing Rights Service urges the NI Assembly to support the introduction of a not for profit mortgage rescue scheme and to ensure it receives adequate resources. We are confident that a government backed scheme could have a significant and positive impact on the lives of many individuals and families who face the prospect of losing their homes.

Context of Briefing

Increasing number of possession hearings

Statistics published by the NI Court Service has shown that there has been a noticeable increase in court action initiated for home possession over the past number of years. In 2001/02, the Chancery Division of NI's High Court dealt with 1,540 orders for repossession, increasing to 2,413 in 2006/07, representing an increase of 57% over this period.¹ In the first quarter of 2008 the number repossession actions taken rose by 33% on the previous year – twice the rate of England and Wales. The Council for Mortgage Lenders has predicted that by the end of 2008, repossessions in the UK will be up from 30,000 to 45,000 and mortgages with more than three months arrears will be up by 17% to 170,000². The Financial Services Authority³ (FSA) has recently stated that arrears and repossessions have increased significantly and also highlighted future potential problems for 1.4 million borrowers who have taken out short-term fixed-rate mortgages when interest rates were much lower and who are due to refinance in the next 12 months.

¹ <http://www.courtsni.gov.uk>

An order for possession permits the lender to request a warrant for the eviction of the homeowner. However, where a warrant has been issued, both parties are still able to agree on terms, thus preventing eviction.

² Council for Mortgage lenders, Housing and Mortgage Market Forecasts 2007/08

³ <http://www.guardian.co.uk/business/2007/dec/05/houseprices.creditcrunch>

Increasing number of clients under threat of losing their home

Housing debt enquiries to Housing Right Service have almost trebled in the last 5 years. In 2007/08 we received 1115 enquiries and 85% of our work involved preventing possession. Based on the experiences of individuals and families who contact our organisation for advice, we believe that the increase in mortgage debt and repossessions is in some regard attributable to the greater availability of credit, the increasing prevalence of secured loans and aggressive marketing of higher interest rate loans, particularly by sub-prime lenders. Sub-prime lenders specifically and aggressively market at people with poor credit history, who invariably find it very difficult, if not impossible, to avail of the more competitive mortgage rates offered by high street lenders. These sub-prime mortgages can be responsible for further exacerbating the financial situation of many vulnerable households, especially where evidence of irresponsible lending takes place. The recent and much publicised rise in repossessions in the US (otherwise known as foreclosures), has witnessed many households with sub-prime mortgages default on their repayments as interest rates have increased.

Levels of homelessness

Official statistics produced by the NIHE confirm that from 2001/02 to 2006/07 the number of households presenting as homeless in NI increased by 48% to over 21000 households. Whilst the number presenting directly as a consequence of having their home repossessed is still comparatively small, it is on the increase. From the 12 month period to March 07, the number of households who presented as homeless giving mortgage default as the reason accounted for 381 households. This represents a 38% increase from the previous year and it now as its highest level since 1991/92. It is not possible to accurately identify the numbers losing their home as a consequence of rent arrears; however, the NIHE has recently stated they had taken legal action in 1176 cases in a 12 month period to March 2007.

Rationale of Mortgage Rescue Schemes

Mortgage rescue schemes can assist households who are experiencing financial hardship and who are faced with the ominous prospect of having their home repossessed. The purpose of mortgage rescue schemes is to enable the household to remain in the property, either as tenants or shared owners, thus preventing homelessness. In doing so, families can remain in their communities. There are a number of not for profit schemes in Britain. Most of these offer occupiers the opportunity to repurchase the property/stake they previously owned, should their financial situation improve. It is important to note that such schemes are usually only suited to those households who are experiencing longer term financial difficulties. Where financial hardship is likely to be of a transient nature, households are advised to try and come to a mutual agreement with the lender, until such a time that they are able to start repaying.

There are a number of tangible benefits available to households who avail of mortgage rescue schemes. They include:

- ◆ Assisting households to remain locally in their home; thus preventing the ordeal of repossession and homelessness.
- ◆ The schemes help contribute to maintaining sustainable communities.
- ◆ Any equity that exists after the sale of the property can be used to pay off any secured debt.
- ◆ These schemes can avoid the lengthy and costly procedures of having to go to court.

Mortgage rescue schemes operate both within the public and private sectors. There are a plethora of private companies operating widespread throughout the UK which offer sale and lease back schemes for households with positive equity. However, only a few schemes operate in the public not for profit sector.

Private Companies offering Mortgage Rescue

Private companies offering sale and rent back schemes have proliferated rapidly over the past few years. These companies target homeowners who are in financial difficulty and who are ultimately faced with repossession. They proclaim to offer an immediate and speedy solution to the homeowners current financial situation which will assist the homeowner in clearing their secured debts, whilst remaining in their homes. Private companies offering mortgage rescue schemes are unregulated as the Financial Services Authority (FSA) do not perceive them to be offering a financial product, but merely regard it as a housing transaction. There is no evidence to suggest that any advertising or marketing of schemes by private companies is scrutinised for deceptive or incorrect information. Another worrying aspect to these schemes is that applicants are not advised to seek independent advice regarding their current financial situation.

Private companies often purchase properties at considerably less than the open market value, (sometimes up to as much as 20% less⁴). Many companies also carry out their own valuations and in many cases undervalue the property below market price. Post purchase, tenants are often charged market rents, which may not be any more affordable than their previous mortgage repayments. They may also be ineligible for Housing Benefit as the transaction may be viewed as contrived. Ultimately, this may lead to many households being drawn back into more financial difficulty, with the difference being they will no longer have the opportunity to realise the true value of their home on the open market. Moreover, these companies also offer very little security of tenure. Fixed term tenancies are mainly offered, which then becomes periodic after the fixed term period expires, meaning the household then rents from month to month. Effectively this means that private companies are within their rights to terminate the tenancy at the end of the fixed term which is usually a 6-12 month period.

⁴<http://scotland.shelter.org.uk/advice/advice-3751.cfm>

Not-for-Profit Schemes

In addition to the private rented sector a number of mortgage rescue schemes currently operate within the social housing sector in Britain. Some housing associations operate schemes in partnership with their local authority e.g. Elgar Housing Association in partnership with Herefordshire Council and Eastleigh Housing Association in partnership with Eastleigh Borough Council. Both schemes have assisted relatively low numbers to maintain their homes due to limited funds and the later scheme has been recently discontinued. The schemes outlined below appear to have been more successful in assisting homeowners in difficult circumstances by purchasing their home and allowing them to remain in the property as a secure tenant.

Mortgage to Rent Scheme (MTR) – Scotland

Established in 2003, the MTR scheme is a national scheme funded by the Scottish Executive and administered by Communities Scotland, which provides a subsidy to a social landlord to buy the property. The maximum subsidy paid for a dwelling by Communities Scotland is 69%. The purchase subsidy is intended to allow for a social/affordable rent to be charged on the property. The price paid by the social landlord for the property is directly related to the open market value of the dwelling. The former owner is then able to repay the mortgage debt and any other secured loans and retain any remaining equity up to a maximum agreed level. All referrals to the scheme must come from an advice agency, which can provide the applicant with free and impartial advice. Post purchase, the former owner is granted a Scottish Secure Tenancy from the participating landlord. The new tenants are then eligible to make a claim for housing benefit, with Communities Scotland contacting the councils, if necessary, to corroborate their case and prove that they had no option but to sell. Also, should the tenants financial situation change in the future they will have the 'Right to Buy' the property again after 5 years. In 2006/07, 173 households benefited of the MTR scheme which had a budget allocation of £9 million. This equated to an average cost just in excess of £50,000 per household assisted by the scheme. The budget allocated for 2007/08 is £10million.

Flexible Tenure Scheme – Joseph Rowntree Housing Trust (JRHT)

The JRHT operate a shared ownership scheme, which initially allows the applicant to become a shared owner on a 'flexible tenure lease'. This lease permits owners to alter their percentage stake to suit their financial circumstances, in a process known as staircasing. Applicants self refer to this scheme, however, they are advised to seek independent advice about their current financial situation from the outset. The JRHT draw on the money generated from staircasing up to fund staircasing down, enabling the occupier to reduce their stake in the property. In extreme cases, if it is necessary for the applicant to staircase down to full renting, the 'flexible tenure lease' will be terminated and the applicant will sign an assured tenancy agreement with the Trust. This is the same tenancy agreement all tenants sign. This scheme has been in operation now for over 20 years and has been very successful. Total receipts for staircasing up over this period have equalled £2.62m with staircasing down equalling £2.37m.⁵

⁵ <http://www.jrf.org.uk/bookshop/eBooks/2029-flexible-tenure-housing.pdf>

Conclusions and Recommendations

Currently in N. Ireland there are no mortgage rescue schemes operating in the not for profit sector. The only schemes available are operated by private sector players who are operating essentially to make a profit. With repossessions likely to increase dramatically in the next 12 months, Housing Rights Service is gravely concerned that more people in financial difficulty and facing repossession might be swayed by attractive marketing literature from private mortgage rescue schemes. We believe that in aiming to prevent homelessness and help communities to remain cohesive, a government led mortgage rescue scheme would provide a much needed safety net for local people in danger of losing their homes. Such a scheme could utilise the not for profit social landlord sector to offer people a genuine alternative. We believe the following key elements should be incorporated into such a scheme.

Key Elements

The scheme should be targeted to those most in need in order to ensure maximum impact and in particular the following criteria should be applied.

Referrals

- ◆ Providing holistic housing debt advice and defending possession proceedings is highly specialist. It is important that referrals to the scheme are made by an independent reputable advice agency with specialist expertise in the area.

Eligibility

- ◆ Legal action to repossess due to mortgage/secured loan arrears must have commenced
- ◆ Applicants must have received independent housing debt advice
- ◆ There is no other means of clearing the arrears /meeting the loan repayments
- ◆ Applicants facing imminent repossession should be fast tracked and all applications should be processed quickly to avoid further build up of mortgage arrears.
- ◆ The property must be the sole/main residence of the applicant.
- ◆ The applicant must be unable to sell and buy a property cheaper, which is suited to their needs.
- ◆ There must be equity in the property.
- ◆ Capital value limits should apply.

Post Purchase

- ◆ The scheme should be flexible to offer both mortgage to rent or shared ownership depending on the circumstances of the applicant.
- ◆ A social subsidised rent should be charged on the property post purchase – this must be affordable.

- ◆ There should be an automatic case for claiming housing benefit if the applicant meets criteria without examining the need to sell the property. The fact the applicant used the scheme should prove that they were in severe financial difficulty.
- ◆ The opportunity should exist for the applicant to buy back all or a share of the property in the future should their financial situation change.
- ◆ In “mortgage to rent” situations occupiers should be granted secure tenancies.

Review Process

- ◆ Applicants who are refused from the scheme should be able to have their decision independently reviewed.

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