

## NO DEFENCE?

### Why People in Northern Ireland Facing Possession Are Losing Out

- Losing the home has a devastating effect on families and individuals yet the majority of people facing housing possession proceedings as a consequence of debt in Northern Ireland arrive at court without legal help.
- In recent years, there has been unprecedented growth in Northern Ireland in the number of actions for possession being taken by lenders. Without robust policy intervention it is likely that house possession rates in Northern Ireland will rise at least as fast as those in Britain over the next 3-4 years.
- The real cost of repossession is unknown. In calculating the significant costs incurred as a result of homelessness because of housing debt consideration needs to be given, not only to the direct and indirect costs to the public purse and lenders' costs, but also to the devastating impact on the family and the implications for the stability of the wider community.
- Access to good quality advice and representation can have a profound impact on a person's ability to remain in their home when facing, or in some cases even subsequent to, possession proceedings. The benefits go well beyond achieving a positive outcome on the day seeking to obtain an agreement between the parties which is sustainable in the longer term.
- In England, Wales and Scotland public funding is available to provide free representation to people facing possession on the day of the court hearing. This has been a cornerstone in governments' response to mitigating the impact of the economic recession on those at risk of losing their home and has proved to be very effective in preventing possession.
- To date, it has been the practice in Northern Ireland not to provide legal aid for this type of assistance. The primary explanation given for this is that the legislation governing the administration of legal aid in Northern Ireland precludes the funding of such assistance. There is however a view that, in housing possession cases, this may not be an accurate interpretation of the relevant legislation and could even breach the principles enshrined in the European Convention of Human Rights.
- Housing Rights Service believes that people struggling with debt in Northern Ireland are losing out as a consequence of this current practice. The scale of the problem and the significant limitations of the existing sources of help which are available make the need for a review both urgent and compelling.

## 1.0 REPOSSESSION - THE LOCAL CONTEXT

Losing the home has a devastating effect on families and individuals, yet the majority of people facing mortgage possession proceedings arrive at court without legal help. Official NI Court Service statistics confirm that during 2009 there were 3902 mortgage possession actions taken. This represents a 77% increase from 2007 and a 64% increase from 2008.

Whilst there has been a decrease in mortgage possessions in 2010, there is great uncertainty about future trends. In 2010, the UK Government commissioned a report to help assess the risks ahead and inform the development of effective policy initiatives.

## 2.0 THE KEY DRIVERS IN MORTGAGE REPOSSESSION

The Department for Communities and Local Government (DCLG) report, "*Modelling and forecasting UK Mortgage Arrears and Possessions*" (2010)<sup>1</sup> identified the following six key drivers that will affect the level of mortgage arrears and possessions in the future:

### **Debt service ratio** (*i.e. mortgage payments divided by disposable incomes*)

In recent years low interest rates have reduced the cost of borrowing and have played a major part in curbing arrears. It is anticipated that two rises (totalling up to 1%) may occur in the next 12 months.

### **Negative equity**

Following sixteen years of consecutive growth, Northern Ireland house prices recorded annual growth of 47.5% to February 2007.<sup>2</sup> When the market crashed, mortgage credit availability rapidly declined and house prices fell significantly, leaving a lot of borrowers in negative equity.

### **Unemployment rate**

The consensus is that, unlike Britain, Northern Ireland has not experienced a meaningful economic recovery in 2010. Economic confidence across Northern Ireland remains tentative, at best, with the prospects of widespread contractions in public sector employment yet to fully take hold. Consumer Council (NI) research<sup>3</sup> recently revealed that 52% of adult population is currently worried about making ends meet and 64% stated that they are worried about their finances in the future.

### **Loan quality**

In Northern Ireland, there was an explosion in the number of mortgage products available with high-risk loans accounting for a significant share of the total market. A recent research report by the Consumer Council (NI) reports that people in the NI are less financially knowledgeable than anywhere else in the UK. Many people were sold these inappropriate mortgage products through intermediaries working in the sub prime sector.

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<sup>1</sup> <http://www.communities.gov.uk/documents/housing/pdf/1643676.pdf>

<sup>2</sup> [http://www.dsdni.gov.uk/mdas\\_end\\_of\\_year\\_report.doc](http://www.dsdni.gov.uk/mdas_end_of_year_report.doc)

<sup>3</sup> Consumer 2010: A Consumer Council research report into the attitudes and concerns of a Northern Ireland consumer in 2010: <http://www.consumercouncil.org.uk/money-affairs/publications-and-research/>

### **Government policy initiatives**

Given the severity of the problem, there has been acceptance of the need for government to help provide a framework of support for struggling homeowners. People in Northern Ireland have not however benefited from some of the more positive initiatives which have been introduced in Britain. In particular there is:

- no Mortgage Rescue Scheme available in Northern Ireland; and
- no public funding available here to fund in situ court representation schemes to provide help and support to homeowners facing the threat of repossession.

### **Lenders' forbearance**

Government pressure, statutory regulation and market conditions that would lead to lenders sustaining losses on many possessed properties, have driven a cultural shift in lenders' management of mortgage arrears and led to an improvement in forbearance practices. There is undoubtedly a more consumer-based approach however the change is not universal, with practices varying between lenders.

Having reviewed the key drivers within a Northern Ireland context it seems likely that, without robust policy intervention, possession rates locally will rise at least as fast as those in Britain over the next 3-4 years. Critically therefore the Northern Ireland Executive needs to remain focused on encouraging forbearance amongst lenders and implementing policy initiatives to assist borrowers and protect homeowners over the longer term.

### **3.0 THE REAL COST OF REPOSSESSION & ECONOMICS OF PREVENTION**

The real cost of repossession is unknown. In calculating the significant costs incurred as a result of homelessness as a consequence of housing debt consideration needs to be given not only to the direct and indirect costs to the public purse and lenders' costs but also to the potentially devastating impact on the family and the implications for the stability of the wider community.

The DCLG report "*Homeowner Support Package: Impact Assessment*" (2008)<sup>4</sup> suggests the average quantifiable cost to the Exchequer of a repossession of a vulnerable household is £16,000. Further evidence from studies<sup>5</sup> suggests that a typical example of homelessness can cost £15,000 to the public purse with a more complex case costing in the region of £83,000. The 2010 DCLG report<sup>6</sup> has also highlighted the following costs incurred by the lender:

- loss on sale (repossessed properties sold at auction or otherwise command a lower sale price);
- lost interest (interest part of mortgage repayment is not regained upon sale); and
- fixed costs (cover court costs, legal fees and estate agent/auction fees).

The wider psychological and social costs of a forced move can include community instability; stress to household members; possible relationship breakdown, as well as physical and mental health issues such as increased dependency of alcohol and prescription drugs.

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<sup>4</sup> Department for Communities and Local Government (2008): *Homeowner Support Package: Impact Assessment*: <http://www.communities.gov.uk/documents/housing/pdf/Homeownerssupportpackage>

<sup>5</sup> "How many, how much?" by Crisis (2003) and "Tenancy Failure- how much does it cost" by Scottish Council for Single Homeless (2007)

<sup>6</sup> Department for Communities and Local Government (2010): *Evaluation of the Mortgage Rescue Scheme and Homeowners Mortgage Support*: <http://www.communities.gov.uk/publications/housing/evaluationmortgageschemes>

The 2008 DCLG report<sup>7</sup> strongly supports the view that investing in the prevention of homelessness makes economic sense with potential savings to be made across a range of government departments. The "*Report of the Independent Commission on the Future of Housing in NI*" (May 2010),<sup>8</sup> endorses this approach and contains a clear recommendation in relation to tackling homelessness: ***"It is essential to support those experiencing difficulties to enable them to remain in their homes. Preventing repossession in the first place is perhaps the most important initiative"***

#### 4.0 ROLE OF SPECIALIST ADVICE & REPRESENTATION

Access to good quality advice and representation can have a profound impact on a person's ability to remain in their home, when facing, or in some cases even subsequent to, possession proceedings.

*T turned up to court unrepresented. She had mortgage arrears of £3,500 and secured loan arrears of £2,000. T lives with her husband and three children. Her husband had lost his job five months earlier. They had submitted a claim for social security benefits but were not receiving Support for Mortgage Interest (SMI). They had a number of other non priority debts also. T's husband was hopeful of a return to work in next month.*

*T met Housing Rights Service Court Representation Officer (CRO) on the day of her hearing. The CRO represented her in court that day. The lender was seeking possession. The CRO requested an adjournment to enable the SMI matter to be investigated, to explore the option of converting from Repayment Mortgage to Interest Only Mortgage and to seek confirmation regarding the employment offer. The case was adjourned for six weeks. During this time, the CRO identified entitlement to SMI and was able to get it backdated. The CRO then negotiated with lender to agree to interest only payments for a six month period (in line with protocol). A financial statement was then completed.*

*Prior to the next court hearing a proposal was agreed with lender to accept a monthly payment of interest plus £50 towards the arrears. Secured loan arrears proposal accepted and all non priority creditors notified and minimum payments agreed. At the hearing a Suspended Order was granted. The case is to be reviewed after six months.*

The value of this type of intervention has been formally acknowledged. Lord Chief Justice for Northern Ireland, Sir Declan Morgan said ***"Housing Rights Service provides in court advice to people facing repossession of their homes... The experience of the Masters hearing these cases is that the practical good sense and legal expertise of the specialist adviser has helped a significant number of debtors through this process and has saved people's homes"*** (Nov 2009). It is also substantiated by the findings of a number of independent evaluations which have recently been conducted into the impact as well as cost effectiveness of specialist services for homeowners in debt.

<sup>7</sup> Department for Communities and Local Government (2008): *Homeowner Support Package: Impact Assessment*: <http://www.communities.gov.uk/documents/housing/pdf/Homeownerssupportpackage>

<sup>8</sup> <http://www.cih.org/northernireland/housingcommission/Report.pdf>

### **Housing Rights Service - Court Representation Service (NI)**

In January 2009, facilitated by the NI Court Service, Housing Rights Service launched an in-situ Court Representation Service for people facing the imminent threat of possession. This has allowed the placement of a specialist adviser (known as the Court Representation Officer) within the court on the days the mortgage possession hearings are being held. People attending court, who have not previously sought advice and who are without representation are able to obtain free independent advice, support and representation on the day of their hearing. The evaluation into the first 6 months of the service produced a number of key findings:

- homelessness was prevented in the vast majority of cases with outcomes (74%);
- the average cost of representation per case was £222.00 (or £68.00 in term of the number of people in each household); and
- 68% of cases that engaged with the service were in paid employment.

### **Shelter's Homeowner Helpline (England)**

Since April 2009, DCLG has funded Shelter and other providers to provide independent advice to homeowners wishing to apply for Homeowner Mortgage Support or to seek more general advice about their mortgage debt. Key findings of their recent research report<sup>9</sup> include that:

- each mortgage debt advice case costs the state, on average, £229; and
- in 63% of cases reviewed the client was helped to stay in their home.

The research demonstrates that housing and money advice works extremely well to prevent repossession. It has low public cost and highlights the effectiveness of the role of court desk advisers in explaining complex legal issues, negotiating with lenders and representing them fairly during the hearing.

### **Housing Rights Service - Mortgage Debt Advice Service (NI)**

In April 2009, the Department of Social Development (DSD) made funding available for Housing Rights Service to pilot a specialist Mortgage Debt Advice Service. The independent evaluation concluded that during the initial 12 month period:

- help was provided to 755 households;
- 43% received advice; 23% benefited from advocacy and negotiation work with lenders; and 22% were represented at court;
- the average cost of dealing with a case was £91; and
- the service represented excellent Value for Money and delivered significant savings to the public purse.

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<sup>9</sup> *Results and Recommendations: outcomes of advice for struggling homeowners* (2010)

[http://england.shelter.org.uk/\\_data/assets/pdf\\_file/0005/275747/Outcomes\\_of\\_advice\\_for\\_struggling\\_homeowners.pdf](http://england.shelter.org.uk/_data/assets/pdf_file/0005/275747/Outcomes_of_advice_for_struggling_homeowners.pdf)

## 5.0 CLOSING THE GAPS BETWEEN BRITAIN AND NORTHERN IRELAND

Despite widespread recognition of the key role of advocacy and court representation in preventing people from losing their homes, the provision of publicly funded court representation services in Northern Ireland is still extremely limited and significantly less than those in Britain.

The primary explanation offered for this distinction is the view that the legislative framework governing the administration of legal aid in Northern Ireland precludes this type of activity (i.e. *the funding of cases where the defendant to possession proceedings does not dispute the mortgage or rent arrears*) from being funded. This is not the case in other UK jurisdictions. The Legal Services Commission in England and Wales has advised that "admitted debt" proceedings have never been excluded from their legal aid scheme. It funds Housing Possession Court Duty Schemes covering 112 courts in England and Wales and the vast majority of all possession claims issued. This service provides eligible persons who have defaulted on their mortgage repayments to be represented in court for the purpose of mitigation, such as agreeing repayment terms. The Scottish Government has also put in place a funding initiative to fund in court advice projects to help provide legal advice and representation for people facing repossession and other problems related to the economic downturn.

A proposal to redress the inequitable situation in Northern Ireland was considered in the 2009 report: *"The Executive's Priority Measures to Deal with the Economic Downturn"*.<sup>10</sup> This was not adopted at that time as it was felt that a number of sources of help were already available and responsibility for justice was not a devolved matter.

The level of service which can however currently be offered under the **Legal Aid "Green Form" Scheme** has shortcomings and may not provide best value for money: Considerations include:

- there is NO provision allowed for preparation for or representation at court;
- assistance is means tested leaving a significant number of people excluded from help;
- no data is currently available to assess the impact/outcome of advice given.

The **in situ Court Representation Service** provided by Housing Rights Service is funded entirely by charitable sources. The current level of funding is however inadequate to cope with the demand for the service and will be significantly reduced from June 2011.

The Report of the Independent Commission on the Future of Housing in NI (May 2010), recognised the inequity of maintaining the status quo, *"the absence of legal aid for those facing eviction from their home, is unacceptable. In England and Wales legal aid is available and has prevented many thousands of households from being rendered homeless"* and recommended *"that government should rectify the absence of legal aid for those facing eviction from their home"*.

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<sup>10</sup> Northern Ireland Executive (2009): *The Executive's Priority Measures to Deal with the Economic Downturn*: [http://www.ofmdfni.gov.uk/the\\_executive\\_s\\_priority\\_measures\\_to\\_deal\\_with\\_the\\_economic\\_downturn-2.pdf](http://www.ofmdfni.gov.uk/the_executive_s_priority_measures_to_deal_with_the_economic_downturn-2.pdf)

## 6.0 OPPORTUNITY FOR CHANGE

Housing Rights Service believes that the devolution of policing and justice powers to the Northern Ireland Assembly in April 2010 provides an opportunity for this issue to be revisited. The scale of the problem and limitations of the existing sources of help which are available make the need for such a review both urgent and compelling.

At present the legislative framework governing the administration of legal aid in Northern Ireland is provided by the Legal Aid Advice and Assistance (Northern Ireland) Order 1981. This precludes the funding of:

- "6. *Proceedings (other than proceedings referred to in paragraph 7 of Part 1) for the recovery of a debt (included liquidated damages) which is admitted debt where the only question to be brought before the court is as to the time and mode of payment of that debt* ".<sup>11</sup>

The Northern Ireland Legal Service Commission has identified in the Funding Code Consultation paper<sup>12</sup> (June 2009) the exclusion of admitted debt proceedings in Northern Ireland as the main barrier to bringing in a scheme of similar nature to that which is operating in England and Wales. There is however a view that this may not be an accurate interpretation of the relevant legislation and could even breach the principles enshrined in the European Convention of Human Rights. It can be argued that a housing repossession case is not simply a claim for the recovery of a debt; it is a claim for repossession of the home. Furthermore, the repossession of one's home engages and arguably infringes Article 8 European Convention on Human Rights (ECHR), the right to respect for the home. The European Court of Human Rights has recently reiterated that "*the loss of one's home is the most extreme form of interference with the right*".

## 7.0 CONCLUSION

In Northern Ireland people facing debt related possession action are disadvantaged because, the provision of publicly funded court representation services is extremely limited and significantly less than those in Britain. Housing Rights Service believes this situation is unfair, unjust and vulnerable to legal challenge. There is an urgent need, in the current economic climate, to address this inequity by:

- Ensuring emergency help is available at court to offer representation to people on the day of their possession hearing; and
- Reviewing current practice to ensure legal aid is accessible to those at risk of losing their home.

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<sup>11</sup> Although it has not yet been fully enacted, a similar provision exists in the Access to Justice (Northern Ireland) Order 2003.

<sup>12</sup> <http://www.nilsc.org.uk/uploads/consultation/documents/NILSC%20Criteria%20Document.pdf>