

Practitioner article

Repossessions in Scotland: an action plan to protect homeowners

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Repossessions in Scotland

Alexis Camble outlines the findings and recommendations of the Repossessions Working Group set up in response to the current economic downturn and consequent rise in repossessions by the Scottish Government.

Introduction

As the recession continues, the threat of repossession will become a reality for an increasing number of homeowners across Scotland. The Council of Mortgage Lenders predicts 75,000 repossessions in the UK in 2009 and from this we can estimate that up to 7,000 of these will be North of the border. In January 2009 the Scottish Government set up a Repossessions Working Group including representatives of the legal profession, lenders and advice agencies. The Group looked at whether legal protection for Scottish homeowners is adequate and what else should be done to help those at risk of repossession. The Group's findings, including a number of recommendations for future action, were reported to the Scottish Government in June (<http://www.scotland.gov.uk/Publications/2009/06/08164837/1>)

Action to date

The Working Group acknowledged the measures taken by the Scottish Government to assist homeowners including:

- funding for both debt and in-court advice services.
- an increase in eligibility limits for civil legal aid.
- £35 million of funding for the Mortgage to Rent (MTR) and Mortgage to Shared Equity (MTSE) schemes, which allow a homeowner to remain in their home through a change of tenure.

The Group did, however, express serious concerns over the lack of repossessions data for Scotland. A clear picture of the situation in Scotland, particularly in comparison with the UK as a whole, is therefore currently unachievable. Efforts are being made to improve the data collected by the Scottish courts; however the Working Group has suggested that data from lenders should also be collected and analysed.

Approach to helping struggling homeowners

The Repossessions Working Group identified a number of key stages in helping struggling homeowners. These stages, explained below, cover early intervention, help for homeowners taken to court, and assisting people for whom remaining in their house as a homeowner is no longer sustainable:

1. Early intervention via advice and assistance to prevent problems arising or escalating

It is important that homeowners facing financial difficulties have access to good quality advice. The provision of advice, assistance, and easy to understand information can reduce the risk of a homeowner being taken to court by their lender. The Repossessions Working Group has highlighted a number of areas to focus on, including:

- the provision of easy to understand information about the repossessions by lenders and the courts
- better signposting to independent financial advice for people faced with redundancy
- warnings of the risks of non-regulated sale and rent back schemes
- a more co-ordinated approach to advice provision by local and national government, Scottish Legal Aid Board (SLAB) and advice agencies.

2. Giving homeowners taken to court opportunities to retain their home through in-court advice, legal representation and legal aid

The Working Group has stressed the need for lenders to show restraint when dealing with borrowers who have defaulted on their mortgages. Lenders should also be encouraged to explore options for rescheduling debt and sustainable repayment plans. The Group has also recommended regular monitoring of the take-up and impact of the UK Government's Homeowner Mortgage Support scheme, which avoids court action by allowing successful applicants to defer payment on part of their mortgage for up to two years. For those homeowners who are taken to court, however, a number of suggestions have been made to reduce the risk of people losing their homes.

- The papers served on a borrower to initiate legal proceedings should be in plain English, explain the court process clearly, and include details of agencies offering advice and assistance.
- Borrowers should be allowed to be represented in court by lay representatives if they would find it helpful.
- Repossession cases should be held in clusters to increase access to in-court (and other independent) advice.

The Group would also like to see improvements to the Mortgage Rights Act 2001, which allows a borrower to apply to the court to temporarily prevent their lender from taking possession of their home. In order to extend the benefits of the Act to all borrowers the Group recommends that **all** repossession cases should have to go to court. In addition,

before granting a repossession order, Sheriffs should give due consideration to whether a lender has complied with the Financial Services Authority (FSA) regulations.

3. Using MTR and MTSE schemes to allow households for whom home ownership is no longer sustainable to remain in their home via a change of tenure

The Group recognised that remaining in a property as a homeowner is not sustainable for, or in the best interests of, every household. It is important, therefore, that the Scottish Government keeps the MTR and MTSE schemes under review to ensure that:

- funding keeps pace with demand.
- the eligibility criteria do not unnecessarily exclude households who have very few options available to them.

Next steps

The Group's report concludes with a number of recommendations for action to be carried out by a range of parties including the Scottish and UK Governments, advice agencies, lenders, and SLAB. In addition, the report also raises the need for reliable Scottish repossessions data if we are to properly assess the level of repossessions in Scotland, the impact of current measures, and the need for further action to help homeowners at risk of repossession. A specific recommendation is that the FSA should require lenders to produce regional repossessions statistics at least every six months, if not quarterly

The Scottish Government will be looking to the Group's findings and recommendations to inform future work to assist struggling homeowners. Shelter Scotland urges homeowners faced with repossession to seek advice as early as possible and advice on mortgage arrears can be found on the Shelter Scotland website:

http://scotland.shelter.org.uk/getadvice/six_steps_to_keeping_your_home

Further information

You can find out more about Shelter Scotland at: <http://www.shelter.org.uk>

If you would like any further information, please send an email to practicescotland@shelter.org.uk in the first instance.