

**SHELTER CONFERENCE: TACKLING MORTGAGE
REPOSSESSIONS: THE SCOTTISH APPROACH
3 NOVEMBER 2009**

Thank you. Good morning ladies and gentlemen.

I am delighted to be here this morning to talk about the work the Scottish Government has been doing to tackle the problem of mortgage debt and repossessions – and I am grateful to Shelter for hosting this conference, which is timely and brings together many of the key players in this field.

I understand that the conference today aims to explore three main areas: why the measures we are taking are required; what the measures will do; and how the proposed changes will work in practice. I will use these aims as the basis for my comments.

During the past five years, the number of home repossessions in the UK has increased, slowly at first, but then more dramatically with the onset of the credit crunch and economic downturn. Between 2004 and 2008 they quadrupled from under 10,000 to 40,000. On current Council of Mortgage Lenders' forecasts, UK repossessions are likely to increase again from 40,000 last year to around 65,000 this year.

Unfortunately, we don't currently have separate repossessions data for Scotland. This is an important issue on which we continue to press both the Financial Services Authority and the Council of Mortgage Lenders.

Not all actions will actually end in repossession - we estimate perhaps only a third - but it underlines the point that the threat of repossession and homelessness, and the misery and anxiety that goes with that, is currently faced by many ordinary people every year in Scotland.

In some cases it may be as a result of poor financial planning on their part, but in other cases for reasons entirely out of their control, through redundancy or some similar misfortune. We shouldn't moralise about why people get into difficulties, but focus on ensuring the best support and protection for everyone who finds themselves in such distressing situations.

Repossessions Group

Against this backdrop of increasing numbers of repossessions, we therefore needed to ensure that protection for struggling home owners at risk of repossession was sufficient.

So we acted quickly to establish the Repossessions Group to consider whether legislative and other protection is adequate or if it should be strengthened.

The Group brought together experts from all sectors involved in the repossession process – from lenders and the law to advice providers and consumer interests. A good number of them are here today to lead conference sessions, including the Chair, Adrian Stalker – who is also your Chair today.

I am grateful to the Repossessions Group for the remarkable amount of work it did in a short period of time – and to Adrian for steering the Group to reach consensus on a wide range of complex issues.

We published the Group's report in June. As would be expected from the membership of the Group, it is a thoughtful and detailed piece of work – with clear considered recommendations.

They covered a wide range of issues, both legislative and non-legislative, with measures for the Scottish Government, UK Government and others.

The Deputy First Minister, Nicola Sturgeon, announced in Parliament that we would take forward all of the recommendations – and where the recommendations are not directly for the Scottish Government, we are encouraging those concerned to act on them.

Home Owner and Debtor Protection (Scotland) Bill

The main recommendations on strengthening legislative protection for home owners at risk of repossession are being taking forward through the Home Owner and Debtor Protection (Scotland) Bill, which was introduced to Parliament on 1 October.

Part one of the Bill has three key provisions, stemming directly from the Repossessions Group report, which I'll outline.

Firstly, we are implementing the recommendation that all repossession cases should call in court, except those where the property has been voluntarily surrendered. Currently, only 5% of repossession cases are defended, leaving 95% of cases going through undefended effectively ‘on the nod’. The bill will enable all home owners to benefit from the protections which are available through the Mortgage Rights (Scotland) Act 2001, but which sadly seem to be used so seldom. As a safeguard, an affidavit will be required before a property is declared to be voluntarily abandoned.

Secondly, lenders will have to show in court that they have considered all reasonable alternatives to repossession by meeting certain pre-action requirements. The courts will take these into account in reaching a decision.

The precise requirements will be set out in secondary legislation. In drawing up these requirements, we are conscious of the need to balance the interests of lenders with those of home owners. The requirements will not, therefore, impose new burdens on lenders, beyond those already set out in Financial Services Authority regulations and the industry's own guidance, but will allow the courts to check that all lenders are meeting those standards in all repossession cases. The bill will match the requirements in the pre-action protocol in England, but have greater force.

Thirdly, the Bill will enable home owners to be represented in court by approved lay representatives instead of solicitors, if they wish. This will make the court process less threatening and encourage more people to take advantage of the legal protection on offer.

Approved lay representatives will be defined in secondary legislation to ensure that high standards are maintained.

The Repossessions Group noted that home owners may not respond to a repossession action until the last minute – when they have been given the date on which the repossession will take place. The Bill aims to make it easier for people to enter the process at an early stage – but we recognise that it must still be possible to seek court protection at a late stage through recall of the decree.

Part Two of the Bill deals with bankruptcy and protected trust deeds. I will deal with this more briefly but there are a couple of provisions which are particularly relevant to home owners.

The Bill proposes to make protected trust deeds more flexible so that people will be able to grant a trust deed which excludes their family home, provided that the terms of the deed is acceptable to the majority of their creditors. This may mean that the debtor has to pay into the trust deed for a slightly longer period but they will have the reassurance that their home is protected as long as they maintain their payments.

As part of this protection, the Bill will allow Sheriffs a discretion to postpone the sale of a family home by any trustee for up to three years. This may be appropriate, for example, where there are children in the home who are at a critical stage of their education.

The Bill will also introduce rules similar to section 11 of the Homelessness etc. (Scotland) Act 2003, and will require trustees in bankruptcies and trust deeds to notify local authorities of court action in relation to family homes.

Those who are familiar with the legislative process will realise that this Bill has been drafted and introduced to Parliament extremely quickly. We believe it is vital in the current economic situation, that the additional protection it will bring to home owners is available as soon as possible.

We are very grateful to those members of the Repossessions group and other stakeholders who have helped us to reach the position we are in today. To introduce a Bill less than four months after the publication of the Group's report is a significant achievement.

However, we recognise that, because of the need to act quickly – the Bill has not undergone the usual consultation process. It is, therefore, important that it is subject to the rigour of full Parliamentary scrutiny – and that stakeholders have the opportunity to play a full part in that process. While I do not intend to change the key provisions of the Bill, on which consensus was achieved in the Repossessions Group on the action required, we absolutely want to ensure that these are achieved as effectively as possible and work in practice. We are, therefore, very happy to take feedback today on any aspect that might cause you concern to ensure we get this right.

I have asked my officials to stay with you throughout the day to pick up any concerns about how we have sought to translate the broad principles agreed in the Repossessions Group report into detailed legislative provisions. There will of course be opportunities to amend the bill as it proceeds through Parliament if required.

We also recognise the need for Parliament and stakeholders to see the draft statutory instruments alongside the bill, to ensure we get this right too and reassure everyone that we are fulfilling, but not departing from what was envisaged by the Repossessions Group. Drafts will be available shortly.

Protection of tenants

One area where the Repossessions Group was not able to make a specific recommendation was on the protection of unauthorised tenants – that is tenants occupying a property which the landlord has let out in breach of the mortgage agreement.

In the event of repossession, such tenants have few rights – and although their numbers are likely to be small, we believe it is still important to consider if protection should be strengthened.

We, therefore, published a short consultation on 9 October, setting out three options to improve protection.

The consultation closes on Friday – and if you have not already provided your views, I would encourage you to consider doing so.

Debt advice

Although legislative protection is vital, it is only part of the picture. The Scottish Government has put in place a number of safety nets to protect home owners at risk of repossession – because we want to ensure as few people as possible reach the point where they need to make use of the protection that will be provided by the Home Owner and Debtor Protection (Scotland) Bill.

I recognise the great work that many of you here today are doing to support people with severe financial problems – and the pressures you are under in the current economic situation.

That is why we provided an additional £1 million to Citizens Advice to increase the capacity of face to face debt advice services – and why the Deputy First Minister announced a further £250,000 in June to support advice providers seeking accreditation against the National Standards for Information and Advice.

Home Owners' Support Fund

For those who are unable to resolve their debt problems and are close to the point of repossession, the Scottish Government has provided mortgage rescue assistance for some years through the Mortgage to Rent scheme.

With the rising number of repossessions, we significantly increased the resources we provide for mortgage rescue to £35m over two years and increased the options by launching a revised Mortgage to Rent and new Mortgage to Shared Equity scheme in March 2009.

The Repossessions Group recommended that we should monitor take-up of the schemes – to ensure the eligibility criteria remain appropriate. We are now six months into the operation of the new schemes, and a review is currently being undertaken. We know that some of you have concerns about certain aspects, so it was right to review the schemes. We have commissioned independent research and will consider its findings carefully when we see the report later this month.

Legal aid and advice

The Repossessions Group also highlighted the importance of advice for those who do reach the courts. Good quality, accessible advice is essential. In April, we increased the disposable income limit for legal aid, bringing a million more people into potential eligibility – and we are making £3 million available through the Scottish Legal Aid Board to expand advice services within our courts to improve coverage across Scotland.

In addition, through the Scottish Legal aid Board we have reconvened the Repossessions Advice Group to consider what more needs to be done to ensure that advice is available to all those who need it. .

Conclusion

We have done a lot of work in a short time – and we could not have got to where we are without the help and support of the Repossessions Group and other stakeholders. We have acted quickly to ensure that home owners in Scotland are protected through the worst of the economic downturn – and as the economy starts to recover, when ironically the danger of repossession may increase.

The measures we are putting in place will therefore continue to be relevant in the future. We are grateful for the support we have received so far, and look forward to continuing to work with you to build the best framework to protect as many as possible from the trauma of repossession and homelessness.