




Forestalling Foreclosure

A new role for local authorities

Nigel Keohane

A blue-tinted photograph of a brick building with a large 'TOP SALE' sign in the foreground. The sign is partially obscured by the text below.

New Local Government Network (NLGN) is an independent think tank that seeks to transform public services, revitalise local political leadership and empower local communities. NLGN is publishing this report as part of its programme of research and innovative policy projects, which we hope will be of use to policy makers and practitioners. The views expressed are however those of the authors and not necessarily those of NLGN.

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1 *Threat and consequences of repossessions*

Recent figures show that the number of properties repossessed by lenders in the second quarter of this year is up 71% on the same period last year to 11,054. Meanwhile, the Financial Services Authority has reported that there has been an increase in the number of homeowners who have fallen behind on mortgage repayments - the figure now stands at 312,000 new loans accounts falling into arrears between April and June.¹

Concerning though these figures are, there is little to suggest that they represent the low point. Stemming from the summer months these figures pre-date the autumn banking crisis, and the Council of Mortgage Lenders (CML) has given warning that repossessions could increase by 50% over the year and that they could increase again next year.² Continuing drops in house prices will only put more homeowners at risk of negative equity. The CML's most recent statistics indicate that repossessions are set to soar to at least 45,000 by the end of the year. Meanwhile, based on figures from the National Association of Estate Agents, *The Times* (21 November 2008) has revealed just how vulnerable many homeowners are to the threat of negative equity and repossession, with more than one in five homes now on the market because their owners cannot afford their mortgage payments.

It is not hard to understand why householders are struggling. Pressure exerted by increasing household bills together with rising mortgage rates is putting renewed stress on borrowers. Particularly vulnerable are those coming to the end of their fixed rate mortgages who are finding that their monthly repayments are jumping and those borrowers who still own only a small share of the equity of the property, with some lenders discontinuing their lending offers to those with low equity percentages.

As the government has admitted, the 'impact [of repossession] on family life can be immense'.³ Previous research has demonstrated that its consequences

¹ *Guardian*, 28 October 2008.

² *The Times*, 28 October 2008

³ CLG Press Release, 'Ensuring a fair housing market for all', 2 September 2008.

involve stress on all family members, even after the process has finished. It also often involves significant levels of social shame, can lead to long-term poverty, poor health and well-being, and impacts on the emotional state of children and their schooling.⁴ In short, repossession can have serious social, economic and emotional implications for those involved.

Local authorities who subsequently support these people through these difficulties also feel additional levels of demand for the services that they provide, whether it is through offering guidance or through the cost of providing social housing. However, the range of wider social, economic and emotional impacts described above make more extensive demands on local resources. Although less quantifiable, these give the effective minimisation of repossessions greater resonance. Shelter has estimated that the financial and social costs of homelessness approaches £6,000 per household.⁵

Local authorities are therefore at the forefront of the agenda in responding to fall-out of repossessions. They are, however, also at the vanguard in responding proactively to the threat of repossessions.

⁴ Sarah Nettleton et al, *The social consequences of mortgage repossession for parents and their children* (JRF, 1999).

⁵ Wakefield Metropolitan District Council, 'Development of a Mortgage Assistance Loan', 25 March 2008.

2 *Government action to alleviate repossessions and their impact*

It is imperative that **government agencies act together with lenders to ensure that repossessions occur in as few instances as is possible. The current measures introduced by the government offer additional assistance to prevent repossession in the medium term, alongside a broader range of support mechanisms for borrowers in the shorter term.**

The Government's policy responses⁶

Government responses represent a three-pronged attack through supporting those who have had their homes repossessed, extending social housing provision and seeking to pre-empt any repossessions.

Government initiatives to counteract repossessions include:¹

- Reform of the DWP's Income Support for Mortgage Interest (SMI), involving a shortening of the waiting period before SMI is paid from 39 weeks to 13 weeks for new working age claims and an increase of the capital limit to £175,000. These measures are to become effective from April 2009.
- CLG announced that it was intending to support up to 6,000 of the most vulnerable homeowners facing repossession to remain in their home through a £200m mortgage rescue scheme.
- A £400 million spending boost for social housing providers to deliver 5,500 more social houses over the next 18 months.
- Guidance to local authorities on eligibility for Housing Benefit on sale and rent back tenants.
- Expanded free legal representation in county courts for households at risk of repossession and the provision of more free debt advice.
- New guidance for households facing financial difficulties - 'Worried about your Mortgage? Get advice now'

Welcome as these steps are, more proactive initiatives are also required to trigger appropriate early preventative action at the local level. This was evident in the Government's recent announcement that more will be done to ensure that repossession is a last resort.⁷ As part of this, the Civil Justice Council has issued a revised protocol for lenders 'designed to encourage parties to exchange information at an early stage, to encourage early settlement of cases'.⁸ Published on 22 October, the new protocol sets out the steps that courts would expect lenders to have taken before the start of a possession claim. These requirements involve early discussions to consider the causes of the arrears and proposals for repayment of arrears. The protocol also advises that the borrower should be directed to the housing department of their local authority and that he / she should be referred to 'appropriate sources of independent debt advice'.

These are all positive contributions to the problem: they will no doubt ensure that a number of repossessions can be avoided; they will mean that families can be better supported through the disruption where they are not.

However, given that it is local authorities that shoulder the greatest responsibilities for dealing with the repercussions of repossession and that they also have the local knowledge and the financial capacity to find solutions, should councils not be given a more strategic role at the outset in preventing repossessions taking place?

6 CLG Press Release, 'Facing the housing challenge - action today, innovation for tomorrow', 16 July 2008; CLG Press Release, 'Ensuring a fair housing market for all', 2 September 2008; HM Treasury Press Release, 'Securing a fair framework for homeowners', 22 October 2008

7 HM Treasury, 'Securing a fair framework for homeowners', 22 October 2008

8 Civil Justice Council, *Pre-Action Protocol for Possession Claims Based on Mortgage or Home Purchase Plan Arrears in respect of Residential Property*, 22 October 2008

3 *Reforms to prevent repossessions*

Local authorities are already positioning themselves to respond proactively to the challenges brought by the credit crunch. Councils such as the London Borough of Lambeth are setting up credit crunch task forces that are looking across the spectrum at issues such as worklessness, housing, child poverty and debt. Meanwhile, Leeds City Council is running a range of anti-debt initiatives and Broxtowe Borough Council is in the process of bringing its local Citizens' Advice Bureau (CAB) into its office so that residents will find it easier to access the CAB services such as debt advice. Perhaps most radically, Wakefield Metropolitan District Council is providing interest-free loans for people who have missed mortgage payments and are in danger of losing their homes.⁹

There have been increasing calls for a renaissance in the role of councils as mortgage lenders.¹⁰ Local authority mortgages have the potential to offer liquidity to the housing market. The government has spoken of 'supporting up to 6,000 of the most vulnerable homeowners facing repossession to remain in their home through a £200m mortgage rescue scheme'. Assistance might come in the form of 'shared ownership', 'shared equity' or 'sale and rent back'. The government announcements go on to suggest that local authorities would have 'a major role in this scheme in assessing applications'.¹¹ More flesh is yet to be put on these bones, but there is significant potential in them.

Nonetheless, little of this will come to fruition unless the correct triggers are in place and councils have the necessary freedoms to act in the interests of their local communities.

Currently, although councils are able to provide mortgages, the rates at which they can offer them are restricted by the 1985 Housing Act. This outdated and rigid standard means that councils are effectively unable to offer

⁹ LGA, *global slowdown: local solutions – councils helping people and businesses* (November 2008)

¹⁰ Chris Leslie and Stephen Cirell, 'Your Local Bank: public alternatives to the private banking system?', *Public Finance*, 24 October, 2008

¹¹ CLG Press Release, 'Ensuring a fair housing market for all', 2 September 2008.

sufficiently attractive rates to take action to resolve local housing problems. Therefore, a key flexibility would be the suspension or abolition of the standard national interest rate at which all council mortgages must be set. NLGN has estimated that if the Government allocated £2 billion to encourage local interventions, 15,000 people could be helped out of difficulty and there would be the realistic potential for long-term profit for the Treasury.¹²

A second piece in the jigsaw should be to ensure that local authorities are placed strategically to respond where they see fit to the threat of repossessions. Trigger mechanisms are needed so that local authorities have the opportunity to intervene.

Currently, there is no requirement on the lender to approach their local authority for such strategic input, and the danger remains that preventable possessions may go ahead because of the absence of this communication and dialogue. Such a requirement is absent from the Civil Justice Council's new *Pre-action Protocol*. Such statutory prompts are also missing from the new guidance of the Council of Mortgage Lenders, which sets out how lenders must operate to abide by the FSA's Mortgage Conduct of Business Rules.¹³

Therefore, NLGN proposes that the Secretary of State for Justice and the Master of the Rolls work with the Civil Justice Council to design a further stipulation under the 'Pre-action Protocol' so that **lenders should be required to advise their local councils of any possible repossessions and give them due time to consider whether the authority wishes to step in** to prevent a repossession and forestall the wider economic and social repercussions. This interaction should occur ideally at an early stage of the proceedings, but should be required legally before it is deemed reasonable for the lender to make any move for repossession.

If instigated, it would ensure that local agencies could respond where they felt it appropriate to pre-empt avoidable repossessions and where it was in

¹² Anthony Brand, *Good House Keeping: stronger communities through local housing intervention* (NLGN, 2008), p. 76.

¹³ Civil Justice Council, *Pre-Action Protocol for Possession Claims Based on Mortgage or Home Purchase Plan Arrears in respect of Residential Property*, 22 October 2008; Council of Mortgage Lenders, *Industry guidance on arrears and possessions to help lenders comply with MCOB 13 and TCF principles* (22 October 2008)

the wider interests of their local communities. In many instances it would be in the financial interest of the council to intervene, averting as it would potential expenditure of alternative housing and other considerable, if less quantifiable, social and economic costs.

Appendix: Letter to the Secretary of State for Justice



Rt Hon Jack Straw
Secretary of State for Justice
Ministry of Justice
102 Petty France
London, SW1H 9AJ

17th November 2008

Dear Jack

Mechanisms to prevent property repossessions

I saw with interest the recent *Pre-Action Protocol for Possession Claims* designed and put forward by the Civil Justice Council. The protocol is to be welcomed as setting out requirements of lenders that are likely to help prevent a number of repossessions and make the repossessions that do occur less distressing for the borrower. However, I am writing to ask the Ministry of Justice to work together with the Master of the Rolls and the Civil Justice Council to enhance this protocol further.

In the current economic climate, we strongly feel that this protocol should be strengthened to give a more significant role to local authorities to work proactively to prevent repossessions before they reach court. Councils are at the forefront not only of providing support to those whose properties are repossessed (for instance, through advice and housing support), but they should also be at the vanguard of helping prevent repossessions in the first place. Due to the social and economic costs that attend repossession it would, in many instances, be in the interests of a local authority to intervene early by offering loans or taking a share of the equity of a property at risk. However, under the current protocol, there is no requirement on the lender to approach their local authority for such strategic input, and the danger remains that preventable possessions may go ahead because of the absence of this communication and dialogue.

We believe it is insufficient for the lender to merely advise the borrower to contact their local authority – a confusing and insufficiently helpful piece of advice at a time of great stress for those facing repossession. Far better for the lender to be compelled into direct dialogue with local authority housing departments themselves, so that those councils can take more proactive and early action to approach and offer help to the borrower directly.


Such a reform could be carried out by introducing an additional stipulation to the protocol requiring that the lender should directly advise the council of the affected borrower in good time before any proceedings are taken to court.

I look forward to hearing how the protocol can be developed further and would be very pleased to discuss any issues around this.

Yours sincerely,

Chris Leslie
Director, NLGN

Cc: Sir Anthony Clarke, Master of the Rolls; Robert Musgrove, CEO, Civil Justice Council.



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