

Prevention of Homelessness Bill

Mike Dailly explains how a few modest legal reforms could help prevent thousands of people being made homeless in the United Kingdom.

Over the last few months Govan Law Centre has been working closely with Mohammad Sarwar MP in drafting a private member's bill to help prevent homelessness. The main focus of the bill is on social security, banking and consumer credit laws. All areas outwith the competence of the Scottish Parliament.¹ The bill's primary aim is to help prevent owner-occupier homelessness, although provision is also made for additional assistance to all residents of domestic dwellings in the UK.

Characteristics of cases

In England and Wales 71% of all households are owner-occupiers with 42% of all households having a mortgage.² In Scotland home ownership is lower with 64% of all households living in owner-occupied homes.³ Research in Scotland has indicated that in 1999, 84% of all houses repossessed were valued at less than £45,000.⁴ We also know from research in England that the majority of owner occupiers threatened with homelessness are the elderly and poor. The householders most likely to have mortgage arrears in 2001 were:

- aged between 65 and 74 (17 per cent);
- lone parents with dependent children (33 per cent);
- headed by someone who was unemployed (45 per cent) or economically inactive other than retired (38 per cent); and
- households with a gross (joint) income of less than £200 per week (35 per cent).⁵

Scale of the problem

The scale of the problem is difficult to measure. A lender can take ownership of a person's home without going to court. For example, in Scotland by service of a calling-up notice in terms of the Conveyancing and Feudal Reform (Scotland) Act 1970 (the '1970 Act'). Scottish Executive research indicates that around 20% of actual repossessions do not require court action.⁶ If people do not give up possession voluntarily a lender in Scotland will usually raise repossession proceedings under section 24 of the 1970 Act.

There were around 5,000 repossession orders granted in Scotland in the year 2000.⁷ Research indicates that 40% of these orders will result in actual eviction.⁸ Thus upon the basis of the available research we can estimate that around 2,600 households in Scotland are made homeless because of mortgage arrears each year.

The scale of the problem in England is proportionately bigger. Around 140,000 people in England have experienced repossession since 1995, with 430,000 people advising that a member of their household had at some time in the past lost their home due to mortgage arrears.⁹ In 86% of repossession cases the reason for arrears is a drop in income: due to loss of employment (33%), and illness or injury (18%). Some 20% of cases are due to a partner leaving or dying, while 35% of people

reported an increase in expenditure and indebtedness as the cause of mortgage arrears.¹⁰

Need for reform

Repossession proceedings can be resisted by homeowners in the United Kingdom. In Scotland, debtors can oppose repossession by asking the court for an opportunity to repay arrears and fulfil the obligations of their secured loan in terms of section 2 of the Mortgage Rights (Scotland) Act 2001.¹¹ In England and Wales, debtors can ask the court to suspend or stay a possession order in terms of section 36 of the Administration of Justice Act 1970, and section 8 of the Administration of Justice Act 1973. These remedies are very effective in practice, but not for everyone.

Govan Law Centre has identified the following ‘compounding’ problems from its casework in Glasgow.¹² We believe that these problems are systemic, and directly contribute to, or lead to homelessness:

Help with housing costs

Around half of the cases which present or are referred to Govan Law Centre in Glasgow involve a person who is in receipt of benefit. Owner occupiers who lose their job and claim income support or income based jobseekers allowance must generally wait 9 months before the Department of Works and Pensions (DWP) will provide help with mortgage interest payments. For those with mortgages before 1 October 1995, 50% of allowable interest is met after 8 weeks of benefit eligibility, with full allowable interest being met 18 weeks thereafter. The Conservative Government reduced help in 1995 as it wanted new borrowers to take out private insurance. However, the Council of Mortgage Lenders has reported that only 22.5% of households have a personal mortgage protection policy.¹³ As at the date of writing the typical cost for protection in the event of unemployment or sickness is around £6 per month per £100 of monthly cover. Such costs can be difficult for low income households. Moreover, Govan Law Centre’s experience is that it can be extraordinarily difficult to claim on a mortgage protection policy and that there is an element of mis-selling of policies. Some typical examples from our files involving major High Street lenders are as follows:

- *Case 1* – claim initially refused due to a purported exclusion for pregnancy related illnesses. Subsequently refused months later on the ground policy premiums were not up to date; months later refused again on the basis that application claim forms had not been received. It took us in excess of a year to obtain payment.
- *Case 2* – claim initially refused as client failed to disclose previous illness, but this was not related to the illness leading to loss of employment. We pursued an internal appeal and eventually obtained a payment. However, the payment was modest because the policy only covered a number of months.
- *Case 3* – claim initially refused upon the basis that no application form received, although GP had sent same. The insurance company then instruct an independent medical examination which resulted in several months of delay.

In all of these cases clients were subject to repossession proceedings and there was a real risk that clients would be evicted before their claim was resolved. Many people will not have access to skilled advice and representation.

Clause 4 of the Bill would amend schedules 2 and 3 of the Jobseeker's Allowance Regulations 1996 No.207 and Income Support (General) Regulations 1987 No.1967 respectively. The DWP would be empowered to provide earlier help with housing costs where to do so would be reasonable in order to prevent homelessness. We could not seek repeal of the 9 month waiting period for help for technical reasons. It is not permissible for a private member's bill in Westminster to incur significant public expenditure without prior Government support. However, clause 4 would entitle applicants to seek additional help with housing costs and ultimately could mean the difference between keeping or losing someone's home.

Fees and charges

Most mortgages have an indemnity clause which means that even if a homeowner repays arrears and gets a repossession action dismissed from court with the minimum (undefended scale) expenses or no expenses, they are still charged the lender's full party-client legal costs on a contractual basis. In practice the bank's legal costs of between £1,500 and £2,000 will simply be debited from the mortgage account. These costs can exceed the level of mortgage arrears in the first place. Likewise many High Street lenders will charge debtors an extra £50 or £60 per month simply for being in at least three months of arrears, together with a myriad of other 'administrative' fees and charges. The adage, 'to have your cake and eat it' springs to mind. Clause 3 of the Bill would enable the court to waive some or all of these charges where to do so would be reasonable in order to prevent homelessness.

Variation of interest rates

With the recent trend of financial institutions offering 'consolidation loans' to pay off multiple debts it is often the arms length companies of High Street lenders who are pursuing repossession proceedings. The difficulty in these cases is that homeowners are often locked into loans with very high rates of interest in relation to principal mortgages. When household income drops it can be impossible to meet the relatively high cost of consolidation loans. One solution is to remortgage to a lower interest rate, but if someone is temporarily unemployed this can be very difficult in practice. The poorest people can only access the most expensive credit: that is a sad fact of financial exclusion in our society. Clause 2 of the Bill would enable the court to vary secured loan rates of interest (to no lower than the DWP's average mortgage interest payment rate) where to do so would be reasonable to prevent homelessness.

Preventing homelessness generally

At present tenants and their partners, qualified occupiers, homeowners and their partners can in certain circumstances resist proceedings which have a crave for eviction. Other occupiers may have no or no readily available right to resist proceedings. In some cases such occupiers may have very little notice of an impending eviction date. Clause 1 of the Bill would introduce a general common sense right for any person who occupied a dwelling house as his or her only or principal home to ask the court to suspend implementation of an eviction decree. This would only be granted where the court thought it was reasonable to do so, having regard to the ability of the applicant's ability to secure reasonable alternative accommodation and the need to prevent the applicant from sleeping rough or in conditions not reasonably fit for human habitation. This clause would therefore provide an additional, or in some cases, the only last resort.

Conclusion

The Bill had its first reading in the House of Commons on 16 March 2004.¹⁴ It has a provisional second reading debate scheduled for 18 June 2004.¹⁵ It is not easy to get a private member's bill passed. It is often thought that very few if any member's bills make progress. In the 2001-02 session of the UK Parliament 17% of all bills passed were private member's bills.¹⁶ Govan Law Centre has been invited to address MPs on the Bill at Westminster. Any support that readers can give to the Bill would be much appreciated – such as writing to your local MP. We are grateful to our local MP Mohammad Sarwar for his hard work in getting this far with the Bill. If the Bill falls all is not lost. The issues remain, and the fact that they are being raised at all with MPs and the Government is a good start on the long and winding road to law reform.

¹ Financial services is a specifically reserved matter in terms of paragraph A.3 of Part II, Schedule 5 of the Scotland Act 1998 (c.46), while consumer protection is specifically reserved by paragraph C.7 and social security law by paragraph F.1 of Part II, Schedule 5.

² Office of the Deputy Prime Minister. Tenure trend from 1981 onwards, table 801 available online: http://www.odpm.gov.uk/stellent/groups/odpm_control/documents/contentservertemplate/odpm_index_hcst?n=1584&l=3

³ Scottish Executive: <http://www.scotland.gov.uk/stats/bulletins/00296-02.asp#bt2>

⁴ Scottish Executive: <http://www.scotland.gov.uk/library5/social/mars-07.asp>

⁵ Office of the Deputy Prime Minister, *Survey of English Housing 2000/01*, available online at: http://www.odpm.gov.uk/stellent/groups/odpm_housing/documents/page/odpm_house_602626.pdf

⁶ See paragraph 5.55 of the report cited in endnote 4, above.

⁷ *Mortgage Arrears and Repossession in Scotland*, McCallum & McCaig, Scottish Executive Research Findings No.158/2002. <http://www.scotland.gov.uk/cru/resfinds/drf158-00.asp>

⁸ *Ibid.*

⁹ *Survey of English Housing*, cited at endnote 5, above, Chapter 3, page 12.

¹⁰ *Ibid.*

¹¹ For a simple guide to the key features of the Mortgage Rights (Scotland) Act 2001 ('MRA') see: <http://www.govanlc.com/mortgage>. For a update on practice issues (as at 7 September 2003) see: http://www.govanlc.com/mra_practicenote_070903

¹² Govan Law Centre receives funding from Glasgow City Council to prevent mortgage repossessions and landlord and tenant evictions across Glasgow.

¹³ See article: <http://www.mortgage-insurance.gb.com/>

¹⁴ Mohammad Sarwar MP's speech is available online at: <http://www.govanlc.com/hansard160304>

¹⁵ A copy of the Bill in PDF format is available online at: <http://www.govanlc.com/homelessbill.pdf>; further information on the Bill is available at: <http://www.sarwar.org.uk>

¹⁶ See House of Commons Factsheet 12: <http://www.parliament.uk/documents/upload/102.pdf>