



Lender notification of repossession proceedings to
local authorities

Non-statutory guidance for local housing authorities



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September 2009

Product Code: 09 PRH 06119

ISBN: 978 1 4098 1915 8

Lender notification of repossession proceedings to local authorities (non-statutory guidance for local housing authorities)

Summary

1. This is non-statutory guidance for local housing authorities in England, issued by Communities and Local Government. It sets out the implications of amendments to Civil Procedure Rules Part 55 (Rule 55.10), which will require mortgage lenders to notify local housing authorities that possession proceedings relating to a mortgaged property in their area have commenced. These amendments will come into force on 1 October 2009 and will cover all mortgages over land which consists of or includes residential property.
2. The aims of these amendments are to:
 - enable local housing authorities to prevent homelessness and to deliver early intervention in repossession cases by being alerted by mortgage lenders of households potentially at risk of homelessness due to property repossession
 - provide a route for local housing authorities to identify households who may benefit from the local authority-led Mortgage Rescue Scheme and Repossession Prevention Fund and
 - provide a clear platform for lenders and local housing authorities engaging in partnership working to help prevent repossessions
3. Amendments to Rule 55.10 do not place any legal requirement on authorities to use the information contained in the notification sent by the mortgage lender, so there are no additional duties on local housing authorities as a result of this change. However, this document strongly encourages authorities to apply good practice upon receipt of this information in the context of their homelessness strategy (required under the Homelessness Act 2002), particularly in the context of the currently high numbers of repossessions and links to the effective delivery of the Mortgage Rescue Scheme. The information provided by mortgage lenders will provide an opportunity for authorities to engage with households and delivery partners proactively before repossession takes place.

Background

4. Households across the country are having difficulties with their mortgage repayments and are concerned that they might lose their home. The number of repossessions have risen during 2008 and early 2009, and may continue to increase in 2010. As a result, there is an increasing number of households approaching local housing authorities to seek advice about their mortgage payments and homelessness assistance.

5. The Government is strongly committed to preventing homelessness and mortgage repossessions wherever possible and is delivering a range of support options for households struggling with their mortgage repayments. A framework of protections and universal help for anyone facing the risk of repossession is in place, with protections from the courts and access to free and independent money and legal advice. Households could also benefit from a range of schemes which help reduce monthly mortgage payments to an affordable level, including Support for Mortgage Interest, for households claiming benefit; the Mortgage Rescue Scheme, designed to help some of the most vulnerable households stay in their homes and for which local authorities are our key delivery partners; and Homeowners Mortgage Support, which can help households experiencing income shock get back on track with their finances by deferring a proportion of their interest payment, backed up by Government guarantee.
6. Some local housing authorities have pointed out during stakeholder engagement events that they would find the information to be provided by mortgage lenders under the changes to Civil Procedure Rules useful for them to deliver their homelessness prevention strategy.
7. Although there are no additional duties on local housing authorities as a result of the changes to Rule 55.10, the Homelessness Act 2002 requires all local housing authorities to have a strategy for preventing homelessness. Housing authorities also have a duty to secure that advice and information about homelessness and the prevention of homelessness is available free of charge to any person in their district who requests it.
8. Local housing authorities' efforts to prevent homelessness must be consistent with their homelessness strategy, published under section 1 of the Homelessness Act 2002. In this context, the information contained in the notification sent by the mortgage lender can provide a useful trigger for the engagement of a wide range of local and national services designed to help prevent homelessness. The Government continues to emphasise that local housing authorities must continue to fulfil all their other statutory duties in relation to homelessness in addition to any steps they take on prevention.
9. Homelessness prevention is about encouraging the provision of a wide range of housing options at an early stage to help more people avoid homelessness altogether. This ethos works effectively to prevent homelessness in a variety of ways. Many local housing authorities have embraced a more proactive and responsive way of working to prevent homelessness, and are operating a number of successful homelessness prevention activities. Local authority homelessness prevention activities have played a large part in the decrease in the number of households accepted quarterly as owed a main homelessness duty by local housing authorities in England.
10. There is a clear role for local housing authorities to help households in difficulty find the most appropriate options to prevent homelessness. This may include homelessness assistance, advice on housing options, or simply referral to the most appropriate delivery partner such as an independent debt advice agency. A referral to Jobcentre Plus may also be appropriate for out of work households.

11. Local housing authorities should be aware of the support that is available to households at risk in order to help them find the right option and avoid homelessness. Further details can be found in a leaflet by the National Homelessness Advice Service (NHAS), *Are you worried about your mortgage – get advice now* which provides information and advice to homeowners on options that are available to help them keep their homes, including where to go for money or legal advice and how to find out more about targeted schemes such as Mortgage Rescue. This can be found at the following link: http://www.nhas.org.uk/publications_events.htm.

Civil Procedure Rules (CPR) amendments

12. The Civil Procedure Rule committee¹ has agreed to make amendments to Rule 55.10, on possession claims relating to mortgaged residential property. This rule provides that—

(2) Within 5 days of receiving notification of the date of the hearing by the court, the claimant must send a notice to—

*(a) the property, addressed to “the tenant or the occupier”; and
(b) the housing department of the local authority within which the property is located.*

(3) The notice referred to in paragraph (2)(a) must—

*(a) state that a possession claim for the property has started;
(b) show the name and address of the claimant, the defendant and the court which issues the claim form; and
(c) give details of the hearing.*

(3A) The notice referred to in paragraph 2(b) must contain the information in paragraph (3) and must state the full address of the property.

13. The provision covers all mortgages on residential property, including buy-to-let.

Data protection compliance

14. The information contained in the notice required to be sent under rule 55.10(3) is personal data as defined in section 1 of the Data Protection Act 1998 (DPA). Local housing authorities will need to comply with the Data Protection Act 1998 when handling the information sent by lenders.

Mortgage lenders exemption

15. The disclosure by a mortgage lender of personal information under rule 55.10(3) falls within the exemption in section 35 of the DPA, which permits disclosure where that disclosure is required by or under any enactment, by any rule of law or by the order of the court. This means that mortgage lenders sending personal data under Rule 55.10 are not in breach of the DPA because they are required to send the information in accordance with Civil Procedure Rules.

16. Note that the exemption would only apply to the extent that the lender is complying with the requirement in the Rules. Lenders will only send the information set out in the Rules to the housing department of the local housing authority within which the property is located. We have proposed to the

¹ The Civil Procedure Rule Committee is an advisory non-departmental public body set up under the Civil Procedure Act 1997 to make rules of court for the Civil Division of the Court of Appeal, the High Court and the County Courts.

Council for Mortgage Lenders that lenders address this to 'The Head of Housing (Homelessness) Service'. If they wish to disclose further information, they would need to seek alternative means to ensure compliance with data protection law. Authorities who wish to seek further information from lenders will need to agree suitable arrangements with them to ensure compliance with the DPA (including ensuring consent from the household concerned).

Local housing authority compliance

17. The local authority receiving the notice and the information contained within it will need to use and protect this information in the same way as that received from any other source and must comply with the DPA. The normal data protection rules will apply.
18. The notification sent by lenders under Rule 55.10 should be addressed to 'The Head of Housing (Homelessness) Service'. To comply with the DPA, authorities may find value in developing protocols to handle receipt of the notification letters. These, upon receipt, should be processed by an identified officer and in accordance with the Data Protection Act 1998.
19. The Data Protection Principles (Schedule 1 of the DPA) provide that personal data can be processed if this is necessary for the exercise of any functions conferred on any person by or under any enactment, or for the exercise of any other functions of a public nature exercised in the public interest by any person.
20. If the local authority wishes to use the data provided by the mortgage lender to contact the household in question, it will need to identify under what power and for what purpose it does so. To comply with the DPA, the local authority might explain to the household that it is contacting them to obtain information about the household in order to help determine whether it is eligible for assistance under the local authority's housing and homelessness functions, and/or to explain the support that is available.
21. If the local authority wishes to share the information obtained from lenders or from households themselves (for example to refer an application for Mortgage Rescue to a Registered Provider), they must ensure compliance with the DPA (including by obtaining consent from the borrower to share the information). Local housing authorities wishing to share information with partners such as mortgage lenders, Registered Providers, or advice agencies, will need to put in place suitable arrangements with such partners.
22. In the same way, if a local authority wishes to process the data further, such as preparing a database of households that might be subject to repossession, it will need to be clear about the basis on which it is doing so.

Using the information provided by mortgage lenders

23. Local housing authorities may develop their own approaches and mechanisms for using the information received by mortgage lenders. Local housing authorities will need to decide whether and, if so, how to act in response to the individual notices received from mortgage lenders. However, authorities may

wish to use the information contained in the notification sent by the mortgage lender to try and prevent homelessness from occurring, as it can provide a useful trigger for the engagement of a wide range of local and national services designed to help prevent homelessness and repossession.

Contacting the household

24. The information contained in the notification sent by the mortgage lender is limited to that requested under Rule 55.10. Authorities may want to find out more about the household, for example, to determine whether the household is eligible for homelessness assistance and whether it includes a pregnant woman, dependant child or other vulnerable person. The authority may find that a household could benefit from other services available to help people struggling with their finances, such as referral to debt advice agencies.

25. Local housing authorities may develop their own approaches for obtaining this information. Authorities could simply contact the household in writing in the first instance, enclosing relevant documentation or advice leaflets on housing options services and information about the Mortgage Rescue Scheme or the Repossession Prevention Fund.

Preventing homelessness

26. When a household is identified as in need of assistance, local authorities can use their existing tools to help households at risk keep their homes; to delay a need to move out of current accommodation so that a move into alternative accommodation can be planned in a timely way; to find alternative accommodation; or to sustain independent living. These tools can include:

- the Mortgage Rescue Scheme
- the Repossession Prevention Fund (or other homelessness prevention funds)
- rent deposit schemes
- mediation
- advice on housing options
- home visits
- dialogue with lenders and landlords

27. The information provided by mortgage lenders will provide a route for local housing authorities to identify households who may benefit from the local authority-led Mortgage Rescue Scheme and the Repossession Prevention Fund, both administered by local housing authorities. It will also help identify households who may benefit from information and advice about other support services – such as debt advice services in the local area, court advice desks or support through the benefits system, including Support for Mortgage Interest payments.

28. Authorities could compare the information received against their own records, for example inquiries on the Mortgage Rescue Scheme, in order to prioritise cases; to provide data on repossession cases in the area; or to target services. When comparing the information received by lenders to any current Mortgage Rescue applications being processed by the local authority it would also be beneficial to contact the Mortgage Rescue Fast Track team to establish if the household is currently being assessed by them. The contact

details of the Fast Track team are at the end of this guidance.

29. The Repossession Prevention Fund was made available to local housing authorities in June 2009 to enable them to offer small loans to households to prevent repossessions and evictions. The majority of authorities are operating successful Homelessness Prevention Funds and these have made a significant difference in preventing repossessions and evictions. Relatively small amounts of money can prevent people from becoming homeless.
30. It is possible that on making contact with the household due to be repossessed an authority may find tenants in occupation who are not aware of the repossession action. Such tenants need to take quick action to find out about and, if possible, safeguard their position.
31. To make most effective use of the information provided by mortgage lenders, it is important that local housing authorities work with other delivery partners, including mortgage lenders, advice agencies, and court desks in order to develop clear communication protocols and to ensure that this new delivery mechanism is successful in helping authorities prevent homelessness resulting from repossession. For example, the advice that the authority provides to the household may lead them to discuss with their lender and/or a money adviser the possibility of a claim for Homeowners Mortgage Support, or awareness that help is available in court desks on the day of the hearing.

Contacts

For more information, please contact the Preventing Repossessions Strategy Team at Communities and Local Government:

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Local housing authorities can contact the Mortgage Rescue Fast Track team to check whether a household is being assessed by the team:

Mortgage Rescue Fast Track team

4th Floor
Government Office for the West Midlands
5 St Phillips Place
Birmingham
B3 2PW
Tel: 0121 352 5300