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Assisting shared owners at risk of repossession: **Flexible tenure**

Questions and answers

Shared owners and repossession

How can shared owners at risk of repossession be helped?

The economic downturn has seen an increase in the number of homeowners facing financial difficulties and having their home repossessed by their mortgage provider. This trend is reflected amongst shared owners with an increased number of shared owners approaching associations because they are concerned about their position. Housing associations should review how they can assist those at risk of repossession.

In the first instance any household at risk of repossession should be encouraged to speak to their lender. The lender may be able to offer a number of options of forbearance to allow the household to continue to make affordable monthly payments. If the household has multiple debts they should be encouraged to seek money advice (see section below).

Your association should also seek to agree with the household a payment plan to cover future rent payments and any arrears on the rent account. The association should not rely on any rent arrears being capitalised onto the outstanding mortgage by the lender.

Associations are encouraged to follow the joint guidance on arrears and repossessions recently issued by the Council of Mortgage Lenders and the National Housing Federation: www.housing.org.uk/homeownership.

- If they are eligible then Housing Benefit can be claimed on the rent due under the shared ownership lease.
- The Support for Mortgage Interest Scheme will meet some or all of the interest payments on a mortgage for those on Income Support, income-based Jobseeker's Allowance, income-related Employment and Support Allowance or State Pension Credit. The waiting time before the assistance starts has been reduced from 39 weeks to 13 weeks and the capital limit has been increased from £100,000 to £200,000 for new working-age claims. For more information see www.jobcentreplus.gov.uk/JCP/Customers/WorkingAgeBenefits/Dev_016128.xml.html
- Homeowners Mortgage Support is a new government support scheme for homeowners which is aimed at people at risk of repossession because they've experienced a temporary drop in income, perhaps because they have had overtime cut or hours reduced. HMS enables the homeowner to postpone part of the interest payment on their mortgage for up to two years. The money postponed is added on to the remaining balance of the mortgage, to be paid back when their situation improves. Not all lenders are signed up to the scheme but those that aren't may offer something similar. For more information see www.communities.gov.uk/housing/buyingselling/mortgagesupportscheme/
- Flexible Tenure – A scheme that can be operated by housing associations for the benefit of their shared owners. Flexible tenure plays a similar role to mortgage rescue and therefore mortgage rescue is not available to shared owners.

How can shared owners access money advice?

It is important that shared owners facing difficulties are encouraged to seek good money advice. There is plenty of free money advice available in person, over the telephone and on the internet. Your association should have established methods to make advice available to its tenants. This may be through in house advisers, by referrals to other agencies such as the local council, Citizens Advice Bureaux or the use of independent financial advisers. You should look to use these same methods for your shared owners. Advice is also available at www.direct.gov.uk/mortgagehelp.

There are a range of advice providers available and a full list is available at the site detailed above. There can be a waiting time associated with getting face-to-face advice, for example through a local CAB. Particularly where a case requires urgent advice, you may want to suggest the telephone based money advice provided by National Debtline (0808 808 4000) or the Consumer Credit Counselling Service (0800 138 1111).

Adopting a flexible tenure policy

What is flexible tenure?

In simple terms, flexible tenure allows shared owners at risk of repossession, to decrease their equity in their home dependent on their circumstances, potentially selling all their equity and becoming assured tenants, where their landlords have chosen to operate this policy. For landlords flexible tenure is optional but strongly encouraged. Shared owners do not have a right to flexible tenure. Following a financial assessment the association buys back a share of the home releasing equity to allow principle mortgage debts to be reduced and to make their housing costs affordable. Other debts cannot be repaid through flexible tenure. When operating a flexible tenure scheme the landlord should ensure that payments are used to reduce the mortgage amount, some landlords may opt to make payments directly to the lender in order to ensure this.

Why should my organisation adopt a flexible tenure policy?

There is a strong moral imperative at a time of rising repossessions, for associations to offer flexible tenure, which although it remains voluntary, fits well with housing associations' social mission and objectives. The primary reason your association should adopt and deliver flexible tenure is as a tool to stop people becoming homeless with all the implications for the family, the community and other services.

If a shared ownership home is repossessed the mortgage provider will then sell the home on the open market so it is lost permanently from the sector.

There is also the financial impact on associations of the repossession of a shared ownership home. In these circumstances the lender will recover all its outstanding debt and costs through the Mortgagee Protection Clause. Any shortfall in the proceeds from the sale will then be born by the association. This loss to the association may be significant, although some of the loss may be offset by a reduction in the amount of Recycled Capital Grant Funding that is repayable.

What types of households can be helped?

There are no restrictions on the shared owners that can be assisted through flexible tenure, but all other avenues of assistance must have been exhausted. However, it would be prudent for associations to ascertain that the application of flexible tenure will make the household's housing costs affordable in the reasonably foreseeable future. A formal financial assessment via a money adviser would give this reassurance.

Are there eligibility criteria?

Most associations adopt a flexible tenure policy that identifies those who will be prioritised through the policy. Associations should also refer to the guidance in the HCA's Affordable Housing Capital Funding Guide (available on the HCA website at www.homesandcommunities.co.uk). Shared owners who have moved to full ownership are not able to be assisted by flexible tenure (but they can access the mortgage rescue scheme).

What issues should be covered by a flexible tenure policy?

A typical flexible tenure policy is likely to include:

- An explanation of flexible tenure.
- A list of the partners involved in delivering the scheme.
- The households to whom the policy applies, and those to whom it does not.

- Some principles and criteria to identify who the association will prioritise.
- A statement that all other options have been exhausted and the application of flexible tenure is the only option available to avoid repossession.
- The minimum level of share that owners can staircase down to before the only option is to move to full assured tenants (no minimum is set by the HCA but most associations opt to buy the whole of the property and rent it back if the level of share is required to be reduced below 25%).
- How the association will ensure that the payment made for the increased share is used to reduce the outstanding mortgage rather than for other purposes.
- How the costs to the association and the lender will be met.
- How the policy will operate in relation to properties in a state of disrepair (future repairs will be the responsibility of the household in a shared ownership arrangement and the landlord in a tenancy agreement). If flexible tenure leads to an assured tenancy the housing association will pick up insurance, maintenance and repairing obligations so a survey of the property should be in order to assess any immediate and future repair liabilities under the Tenant Services Authority's Social Housing Standards.
- HCA funding cannot be used to carry out repairs.
- Responsibilities within the organisation.
- How the policy will be monitored and reported.

How do we identify those who can or should be assisted?

You should encourage residents with financial difficulties to directly approach their lender and your association before their financial position gets too bad. You may want to produce some literature that encourages such early contact.

You are most likely to spot people falling into difficulty because they start to accumulate arrears on the rent element. Early contact with these residents becomes especially important and they should be made aware of the scheme as part of the arrears process.

The National Housing Federation and the Council of Mortgage Lenders have agreed a protocol in relation to arrears and repossession relating to shared ownership properties. This guidance can be found here: www.housing.org.uk/homeownership.

Is flexible tenure open to all housing associations to provide?

All associations that have shared ownership stock are encouraged to adopt and operate a flexible tenure policy.

How else can we help shared owners to avoid repossession?

Shared owners should be encouraged to contact the housing association before they start to fall into debt so they can discuss the difficulties that they face. The information provided to shared owners should stress this and highlight the support that the association may be able to provide. Some housing associations also provide dedicated money advice for their tenants and leaseholders, this could be of great benefit to your shared owners too.

Funding flexible tenure

How can my association fund a flexible tenure policy?

The application of flexible tenure can be funded through the associations own resources or through the use of the Recycled Capital Grant Fund, with the maximum contribution capped at 70% of the value of the share being purchased. Where RCGF is not available and the association has exhausted the possibility of transferring RCGF from within or outside of their group structure the association can apply to the HCA for grant on a case by case basis and only for grant funded properties. The HCA guidance on permitted uses for RCGF can be found at http://cfg.homesandcommunities.co.uk/permitted-uses (see section 6.6). If RCGF or grant funding is used then the HCA's policies relating to flexible tenure must be followed, amongst other things this limits flexible tenure to grant funded properties only.

A local authority does not want my association to prioritise Recycled Capital Grant for flexible tenure. What should I do?

Housing associations are required to consult local authorities on how the RCGF accumulated in their areas should be spent, but decisions on how RCGF is spent is one for the association in conjunction with the HCA regional investment team. The prevention of repossessions should be an important current priority for all local authorities so you should seek to contribute to the local debate on how RCGF should be targeted. You can also illustrate the value of flexible tenure through the potential savings to the local authority in terms of the increased pressure on housing options services, the cost of temporary accommodation for homeless households and the possible need for support.

The HCA has on a number of occasions, publicly and strongly encouraged all associations to prioritise the use of RCGF for flexible tenure.

Is there HCA grant available to support flexible tenure?

The HCA is willing to consider the use of grant funding on a case-by-case basis. There is no presumption of grant funding being made available for flexible tenure. The HCA will, on a case by case basis, where all other options have been exhausted, including the use of RCGF, consider funding flexible tenure in line with the principles established in the AHCFG, through grant funding, where housing associations have made a justifiable case for doing so.

How do I apply to the HCA for grant?

Your development team should discuss the potential for grant with their HCA regional investment team at an early stage.

How should we deal with negative equity?

Lenders may be unwilling to write off negative equity because the Mortgagee Protection Clause in the shared ownership lease in effect gives them priority over the housing association in recovering their outstanding loan in the event of repossession. Lenders could be approached to see if they would write down overhanging debt or associations may have to do this from their own resources. RCGF or grant funding can only be used for flexible tenure if the property/share in the property is purchased at market value, so it cannot be used to pay off overhanging debt. If the household will have any remaining debt they should be encouraged to seek further money advice on how to manage that debt.

Making it happen

Are there existing examples of good practice?

There are very many housing associations that have already adopted flexible tenure policies so there are examples that you can see. The Homelessness Action Team holds some examples so you should contact the team if you want to find out more.

How can we get assistance to review our prevention work with shared owners?

The Tenant Services Authority and Communities and Local Government support a team of Special Advisers in the Homelessness Action Team. The team works with housing associations, local authorities, ALMOs and other key stakeholders, both strategically and operationally, to prevent and tackle homelessness. The team primarily delivers this role through sharing good practice and working with organisations to implement that good practice. You can find out more at www.tenantservicesauthority.org/hat.