

## **HOMELESSNESS ETC (SCOTLAND) ACT 2003 SECTION 11 RESPONSE TO CONSULTATION PAPER**

This submission is issued in response to the Consultation Paper on the implementation on Section 11 of the Homelessness etc (Scotland) Act 2003 and in particular Section 3 thereof inviting responses to the Paper.

We are amongst the leading practitioners in Scotland in the field of Mortgage Litigation and Arrears Management. We act for the majority of Mortgage Lenders, both Scottish and UK.

It is not appropriate for us to comment on the desirability or otherwise of the proposal that the relevant Local Authority should be advised of a potential repossession. We accept this is a matter for the Executive.

We do have grave concerns however, as to the practicality of the proposed procedures.

Principal amongst these is the suggested timing of the intimation to the Local Authority. The Guidance Notes suggest that intimation is to be made where either a Calling Up Notice is issued or when an Initial Writ has been lodged at Court for warranting. We firmly believe notification at this stage is too early and will prove to be **impractical**.

The overwhelming aim of all our Lender clients when dealing with Mortgage Arrears cases is that of rehabilitation. These are at the core of the instructions issued to us by our Lender clients and we are proud of the fact that we rehabilitate over 90% of the Arrears cases in which we are instructed. It is our experience that our Lender clients are entirely sympathetic to cases of genuine hardship and both they and we will use all means at our disposal to provide assistance in such cases whether unilaterally or in conjunction with the various Agencies engaged in this field.

Unfortunately, despite considerable efforts on the part of our clients before we are instructed and, indeed, ourselves after we have been instructed, it is frequently only the service of a Court Writ which persuades the Borrowers to contact us and thereby begin the process of rehabilitation (you should note that Calling Up Notices are used very infrequently except in the case of voluntary repossession).

If, as we have said, 90% of our cases are rehabilitated, it follows that there will be an enormous waste of the Local Authority's time in investigating cases which will not, at the end of the day, result in repossession.

It may be more sensible to intimate once a Decree in is place. However, our figures again disclose that over 75% of such cases also result in rehabilitation.

There is a further situation where the involvement of the Local Authority would be unnecessary. In many cases we enter into voluntary arrangements with our client's Borrowers to repay the Arrears over an agreed period of time. In such a case, no further action is taken providing such arrangement is adhered to either for an agreed period or until such time as the Arrears are repaid in full.

A final difficulty relates to action taken in a previously obtained Decree. You will be aware that a significant number of Borrowers find themselves in Arrears situations in numerous occasions and in such cases we would normally instruct the Sheriff Officer to proceed with a Charge on a previously obtained Decree. Provision would require to be made as to when intimation is to be made to the Local Authority in such circumstances.

**We do believe the proposals as presently framed are virtually unworkable. A practical solution may be to amend the law whereby an ejection can follow after an extended period (say 2 or 4 weeks) following a Charge rather than the present 48 hours. A requirement that intimation was made to the Local Authority at this stage would vastly cut down the number of such intimations and thereby enable the Local Authority more easily to immediately investigate the situation and decide whether or not intervention is necessary. We would be happy to discuss the contents of this response, and the implications thereof further with you.**

**Aberdein Considine & Co.  
Solicitors  
8&9 Bon-Accord Crescent  
Aberdeen  
AB11 6DN  
LP 1 Aberdeen – 1  
DX AB46**