

# Repossession Pre-Action Protocol

August 2009



Following the consultation which closed earlier this year Lord Chief Justice, Sir Declan Morgan has announced the "Pre-action Protocol for Possession Proceedings based on mortgage arrears in respect of residential property".

The protocol which closely follows the protocol which came into effect in November 2008 in England and Wales, will come into effect in Northern Ireland on 5 October 2009. The purpose of the protocol is to reduce repossession court proceedings through negotiation and exploring alternative ways of reaching a settlement other than court action.

The protocol sets out a number of steps which lenders must follow in order to comply with their obligations. If the action later proceeds to court the lender must be able to fully demonstrate that their actions were sufficient to fulfil these requirements or their application for a repossession order will fail. It is imperative that all lenders ensure that their policies and procedures comply with the protocol and seek advice on specific cases when appropriate to avoid unnecessary delays if proceedings are finally issued. The Mortgage Repossession Unit at Cleaver Fulton Rankin is experienced in a range of alternative dispute resolutions procedures and so is well placed to aid both lenders and borrowers through the pre-action protocol.

Sir Declan Morgan has already been quoted by the BBC as saying "While the steps set out in the protocol are already implemented as best practice by many lenders, the introduction of the protocol setting out the standards expected by the court will help ensure that best practice is adhered to in all cases. This will help make sure that no-one loses their home in Northern Ireland unless there is no reasonable alternative."

In England and Wales the protocol has substantially reduced both lenders taking repossession action to court and the number of repossession orders being granted. Following the introduction of the protocol the Ministry of Justice posted the following statistics on mortgage possession actions during the first quarter of 2009 in England and Wales:

- mortgage possession claims were 42% lower than in the first quarter of 2008 and 13% lower than in the fourth quarter of 2008.
- mortgage possession orders were 39% lower than in the first quarter of 2008 and 43% lower than in the fourth quarter of 2008.

The statistics are promising for both lenders and borrowers alike as the protocol appears to be helping borrowers retain their homes and lenders retain their customers. Given that many properties facing repossession are in negative equity this is positive step for everyone concerned.

The Mortgage Repossession Unit at Cleaver Fulton Rankin currently advise both lenders and borrowers, therefore if you feel that this may affect you or your business please contact Lisa Boyd or another member of the Mortgage Repossession Unit who will be happy to help you.

*Please note: The content of this article is for information purposes only and further advice should be sought from a professional advisor before any action is taken.*