

Pre-Action Protocol “The Scottish Impact”

Crawford McCaughie

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England & Wales

- Principle accepted by Council of Mortgage Lenders
- 19 November 2008
- Dialogue – CML & Ministry of Justice
- Review in late 2009

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Scotland

- Examples of different Legislation
- Announcement – 23 October 2008
- CML (Scotland) Activity
- Political Activity (Holyrood and Westminster)

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Repossessions Group

- Sub-Group of Debt Action Forum
- “Short Life Working Group”
- 14 Members
- Lawyers / Mortgage Lenders / Debt Advisers & Consumer Bodies

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Repossessions Group Remit (abbreviated)

- Consider urgently whether the legal protection for homeowners in Scotland at risk of repossession is adequate
- If necessary, make specific recommendations on ways in which legislation should be strengthened
- Consider what else Lenders and others might do to help those at risk of repossession

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Repossessions Group Final Report

- Published in July 2009
- Recommended Actions – 28
- Statistical Information
- Further Work – Landlord Default

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Repossessions Group

CML Response to Final Report

- Many Lenders will have embedded the changes to the legal framework in England & Wales in their arrears management systems across the UK.
- We look forward to working with the Scottish Government to ensure that legislation is proportionate and complements existing regulation and best practice.

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Debtor Protection (Scotland) Bill

- Announcement – 3 September 2009
- Bill to be published in Autumn 2009
- Consultation Stage
- Implementation Date ?

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Bill - Protections

- All repossession cases to involve court proceedings with the exception of voluntary possessions.
- Lenders to demonstrate to court they have taken reasonable steps to avoid repossession – i.e., a “pre-action protocol with teeth”
- The use of lay representation where the home owner wishes it.
- Extending the period where a Sheriff may postpone the sale of a family home in bankruptcy from one to three years.

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Bill – Protections (2)

- A requirement for Trustees in Bankruptcy and Trust Deeds to notify the local authority of the sale of a family home.
- Allowing the exclusion of specified assets, including the family home, from protected trust deeds.
- Improving access for debtors to debt relief by providing a new route into bankruptcy.

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CONCLUSION

- Pre-Action Protocol in England and Wales has certainly had an impact in Scotland but will Scotland's proposed amendment to legislation constitute a

Pre-Action Protocol?

Time will tell !!!!!!!!!!!!!!!!!!!!!!!

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