

# **Mortgage rescue scheme – eligibility to Housing Benefit**

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Karen Whinfrey

## Mortgage rescue scheme – eligibility to Housing Benefit

### Key points

- The mortgage rescue scheme has been designed to help vulnerable families at risk of repossession to stay in their homes
- The £200m scheme is one of a range of measures the government is putting in place to help ensure repossession is always a last resort
- The scheme is targeted at the most vulnerable households: those on incomes of less than £60,000 a year who would be entitled to be re-housed under homelessness legislation. These would be people who are elderly, disabled or those with children
- Households will be able to apply to their local authority for one of two options to help them remain in their homes, depending on their circumstances
- They will either be able to:
  - Sell a share of their home to a housing association under the shared equity option, enabling their monthly mortgage payments to be significantly reduced or
  - They can sell the entire home to a housing association under a government mortgage to rent option and remain in the property as tenants paying a subsidised rent.
- Housing Benefit (HB) regulations state a claimant is not eligible for HB if he or she, or a partner, have relinquished entire ownership of their property and are now renting the same property that they previously owned, if they owned that dwelling within the last five years. That is unless the claimant is able to satisfy the authority that he or she or a partner could not have continued to live in the dwelling without relinquishing ownership
- Entitlement to HB can therefore be affected under a buy to let scheme.

### Introduction

The downturn in the international market over recent months has created a challenging environment in the housing market and the government is determined to take action to help those facing repossession.

On the 24 November 2008 the government announced a package of new measures and reforms to provide real help to families at risk of repossession. The measures are the next step to a wider range of support for hard-working people who are suffering a loss of income through no fault of their own. The measures give them the option to stay in their homes with repossession being the last resort. The measures include:

- Agreement with major lenders to wait at least three months before initiating repossession proceedings, in order to explore all other alternatives. The government has also welcomed the commitment by lenders to look at all possible options to prevent repossession, such as reducing payments and mortgage rescue schemes
- Bringing forward the government's £200m mortgage rescue scheme to start early in a number of local authority areas. More than 60 councils throughout England were involved in 'fast tracking' the set-up of the mortgage rescue scheme and were able to start taking applications from the beginning of December 2008. The scheme will help up to 6,000 of the most vulnerable households avoid the trauma of repossession over the next two years
- Enhancing the mortgage rescue scheme to cover vulnerable families at risk of repossession because of additional loans secured on their home. Often families are more likely to default on these loans because of higher interest rates.

The mortgage rescue scheme was rolled out across England on the 16 January 2009.

This briefing paper has been written by Karen Whinfrey. Karen has over 25 years experience working for Housing Benefit providers in both the public and private sector. In addition to a broad knowledge base as a Housing Benefit assessor and team leader, Karen is currently involved in quality control, mentoring, training and developing staff who are working within the benefits service.

Since 2007, Karen has been delivering Housing Benefit training to social landlords on behalf of HQN, with a particular focus on the impact that HB payments have on rental income.

### *What is the mortgage rescue scheme?*

The £200m package of measures is aimed at those who would be eligible for homelessness assistance and is subject to a range of eligibility criteria. The mortgage rescue package has two elements and operates by bringing together local authorities, housing associations, lenders and debt advice agencies. The elements are:

- **Shared equity** – this is designed to help householders who have experienced payment shocks from remortgaging and/or higher living costs. They may be likely to retain their current income but need some help in paying their mortgage. The housing association provides an equity loan of between 25% and 75% of the homeowner's current mortgage direct to the homeowner's lender, enabling the mortgage repayments to be reduced. The equity loan is secured against the property. Monthly payments are then made by the homeowner on the remaining mortgage and the loan
- **Government mortgage to rent** – this is designed to help the most vulnerable households on low or unstable incomes with little chance of sustaining a mortgage (those who are more suited to social tenancies). In this case the housing

association clears the secured debt completely and the applicant pays rent to the housing association at a level they can afford.

The level of grant to a housing association will be determined using the Homes and Communities Agency's value for money assessment criteria, after a money advisor has advised on the most appropriate route and after establishing a household's affordable housing costs.

The scheme aims to help up to 6,000 vulnerable households over two years.

### ***What are the eligibility criteria?***

On referral to the local housing authority, an assessment of a household's eligibility will be made in the same way as for homelessness assistance. The household must include someone with priority needs as defined in the Housing Act 1996 (and Priority Needs Order 2001):

- A pregnant woman
- Someone with dependent children
- Someone who is vulnerable because of old age or a physical/mental impairment.

In addition:

- All owners must agree to be considered for the mortgage rescue scheme
- They must have sought debt counselling and agreed to arrangements to repay debts
- The household must earn less than £60,000 per year
- The value of your home shouldn't be higher than the level set for the region
- There must be a clear need to stay in the home
- The home must be suitable for their needs
- They must not own a second home
- The value of the part of the home they own must be enough to pay off outstanding debts.

The process once admitted to the mortgage rescue scheme is then as follows:

- On referral to the local authority, the household's homelessness eligibility is assessed

- If eligible, the lender is alerted
- Money advisors (MAs) are engaged
- MAs draw up and agree with the household a debt management plan or other financial solution setting out their realistic affordable housing costs
- Housing association or HomeBuy agency is engaged
- The property is visited to ensure it is structurally sound
- Decision is taken on the suitability of a shared equity option or mortgage to rent
- Local authorities to agree with lender to freeze all further action and interest.

***Are people entitled to Housing Benefit under the government mortgage to rent option of the mortgage rescue scheme?***

- Under Regulation 9(1) of the HB (State Pension Credit) Regulations some claimants who are liable for payments on their home may be treated as not liable for those payments. Regulation 9 lists the specific circumstances when claimants are treated as not liable to make payments and cannot qualify for HB
- One of the specific circumstances whereby a claimant may be treated as not liable for payments is where they previously owned, or their partner previously owned, the dwelling in respect of which the liability arises unless:
  - More than five years have elapsed between the date they relinquished ownership of the property and the date on which HB is claimed
  - They can satisfy the appropriate LA that they or their partner could not have continued to occupy that dwelling without relinquishing ownership.

This has been clarified by recent case law 9 (2009 UKUT 20(AAC)) <http://www.osscsc.gov.uk/asp/view.aspx?id=2625> which states that:

- LA HB sections should consider whether this claimant could continue to occupy the property without relinquishing ownership, ie, what is possible and what options are available for this particular claimant
- The claimant's own perceptions of what may be possible may also be relevant.

The Department for Work and Pensions guidance manual further confirms the intention of this regulation and states: treat a person who is liable to pay rent as not liable to pay rent for HB purposes if they:

- Once owned the dwelling (as a freeholder or leaseholder) that they now rent
- Sold the dwelling less than five years before

- Did not need to sell the dwelling to remain living in it.

However the DWP guidance manual is not the law. Local authorities should be applying the HB regulations and any relevant case law.

### ***Examples of when transfer of ownership may occur***

- A housing association agrees to take over ownership of the property and take on the ex-owner as a tenant. This may now also occur through a mortgage rescue scheme
- In cases of shared ownership, a tenant cannot afford the payments on the percentage owned, and the housing organisation agrees to take back part of the ownership and enable the tenant to rent a larger share. Eligibility for HB is considered on the rental portion (Regulation 12 of both HB working age and Special Pension credit regulations)
- A claimant was so far in arrears with a mortgage that the lender was on the point of seeking legal possession.

### **Conclusion**

Under the government's new mortgage rescue scheme, transfer of ownership may become a much more common situation. Where this transfer takes place a claimant must satisfy the conditions of Regulation 9 in order to be entitled to HB.

As stated previously, where the property was relinquished more than five years before the HB claim is made, HB can be paid, provided there is a legal rent liability and all other conditions are satisfied, including details of income and capital. However, where the property was relinquished less than five years previous to the date of the HB claim, the claimant has to satisfy the local authority HB provider that they could not have stayed in the property without relinquishing that ownership.

While a claimant does not have to show that the lender or housing organisation was about to seek possession, they must show:

- That there was no way they could reasonably retain ownership
- That all other means were explored.

If the claimant states that this is the case and they could not continue residing in the property without the transfer of ownership, they:

- Must provide the reasons for giving up ownership

- Are responsible for showing that this is the case and they would otherwise have had to leave the property
- Should be able to provide written evidence such as letters from the lender about action to be taken over arrears.

An HB provider should examine the reasons for transfer of ownership and evidence carefully to decide if the claimant's actions are reasonable in the circumstances. Each case should be considered on its merits.

Where the claimant is responsible for showing that they had to give up the property they have to show or prove they had no alternative and this doesn't include the fact that they thought what they did was for the best. They have to prove they had no alternative and that the lender had not provided any alternatives. Some people will make a decision to transfer ownership before they have explored and exhausted every single avenue that may be offered to them (they may jump before they are pushed). They may think they are doing what is for the best, before arrears and debts become worse, but unfortunately their claim for HB may then fail as they cannot then prove they have exhausted every choice or option their lender would have given them.

However, claimants who have transferred ownership of their property under the mortgage rescue scheme will have had to satisfy the strict eligibility criteria to qualify for it. This criterion, as previously stated, includes the fact that owners must have sought debt counselling and advice, agreed to debt rescheduling and discussed alternative options with mortgage lenders before admission to the scheme. They will have had to show there was no way they could reasonably retain ownership, and that all other means had been explored.

Therefore, where someone has transferred ownership of their property under the mortgage rescue scheme, and has therefore satisfied the criteria for the scheme, it is likely that they will satisfy the conditions of Regulation 9. They should have exhausted all possibilities of retaining ownership of their property with their mortgage lender before being admitted to the scheme, and before relinquishing their property. However, as this is an area where the HB provider has to exercise its discretion, someone considering this scheme is strongly recommended to seek independent advice regarding what they need to do to satisfy the tests for HB.

If HB is refused, the claimant may wish to appeal against this decision, as the tribunal may take a different view to that of the local authority. Again, they are advised to seek assistance with this.

### ***Information relating to the proposals***

Mortgage rescue scheme extended across England, CLG

<http://www.communities.gov.uk/news/housing/1120655>

Mortgage Rescue Scheme, CLG

<http://www.communities.gov.uk/housing/buyingselling/mortgagerescuemeasures/>

DWP guidance manual

[http://www.dwp.gov.uk/housingbenefit/claims-processing/operational-manuals/hbqm/parts/pta\\_03b.asp#a\\_230](http://www.dwp.gov.uk/housingbenefit/claims-processing/operational-manuals/hbqm/parts/pta_03b.asp#a_230)

Does the majority of your organisation's income come from Housing Benefit? Are you maximising this income stream? Following the hugely popular Housing Benefit training in 2008, our specialist team have updated this in-house event which will be available throughout 2009. For further details on this training please contact Dave Ganz, Executive Director of Training and Development Services, to discuss your specific needs on 07921 308823 or by emailing [training@hqnetwork.co.uk](mailto:training@hqnetwork.co.uk)

HQN is the largest independent housing training and consultancy company in the UK. Over 680 housing organisations nationwide subscribe to The Housing Quality Network which provides high quality briefings and workshops on a wide range of issues affecting the sector. We also run a number of specialist networks, provide bespoke consultancy and research, in-house training, interim management (The Pool) and executive recruitment (The Source) services and host a comprehensive programme of conferences and seminars.

**For further information, please contact:**

Consultancy: Jason Lukehurst – [jason@hqnetwork.co.uk](mailto:jason@hqnetwork.co.uk)

The Housing Quality Network: Claire Turner – [claire@hqnetwork.co.uk](mailto:claire@hqnetwork.co.uk)

Specialist networks: Ben Osborne – [ben@hqnetwork.co.uk](mailto:ben@hqnetwork.co.uk)

Events: Fiona Macfarlane – [fiona@hqnetwork.co.uk](mailto:fiona@hqnetwork.co.uk)

Training: David Ganz – [dave@hqnetwork.co.uk](mailto:dave@hqnetwork.co.uk)

The Pool: Ruth Leap – [ruth@hqnetwork.co.uk](mailto:ruth@hqnetwork.co.uk)

The Source: David Ganz – [dave@hqnetwork.co.uk](mailto:dave@hqnetwork.co.uk)

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