



CONSULTATION RESPONSE

Sale and Rent Back (August 2008)

Background

The Northern Housing Consortium welcomes the opportunity to contribute to the National Landlords Association's (NLA's) consultation on the guiding principles for its forthcoming Code of Practice for landlords involved in the sale and rent back market, as outlined in their consultation paper '*Sale and Rent Back Code of Practice*'.

The Northern Housing Consortium (previously the Northern Consortium of Housing Authorities 1974 - 2002) was established in April 2002. It is an independent, non-party political, 'not for profit' organisation working to improve and promote housing services across the North. Its members include Local Authorities, Registered Social Landlords (RSLs), Arms Length Management Organisations (ALMOs) and other organisations involved in housing.

The Northern Housing Consortium is governed by its members who between them manage around 90% of social housing in the North, around 1.4 million homes. These member organisations are drawn from the three Northern Government Office regions - the North East, the North West and Yorkshire & Humberside, as well as the Housing Corporation (North) area for RSLs.

Summary

Our response is set out below and explores the Northern Housing Consortium's (NHC's) position on the National Landlords Association (NLA) draft Code of Practice for landlords involved in the sale and rent back market.

The aim of the NLA's draft Code is to raise standards across the private-rented sector and to protect vulnerable consumers who can no longer afford the costs of home ownership.

Northern Housing Consortium's response

The NHC broadly welcomes the NLA's proposal on their draft Code of Practice for landlords involved in the sale and rent back market. In the current economic climate, with rising numbers of repossessions, it is imperative that home owners facing financial difficulty and imminent repossession are protected from rogue landlords. Furthermore, it is essential that as wide a range as possible of housing options are made available, therefore although the NHC recognises that sale and rent back will not stop repossessions, we believe that ethical sale and rent back could be a viable way forward for some

home owners who can no longer afford the costs of home ownership, to remain in their properties. It is essential that vulnerable home owners are protected and prevented from being taken advantage of by rogue traders as far as possible. We therefore strongly favour the guiding principles launched as a central part of the Code of Practice which have at its heart, the protection of vulnerable consumers. We agree with the NLA, that transparency, redress, raising standards and independence should help control rogue operators who target vulnerable home owners and offer unfair deals.

Recent statistics published by the Ministry of Justice on the 15 August 2008, in their bulletin on mortgage and landlord possession actions in the county courts of England and Wales, indicate that mortgage and landlord possessions are on the increase and likely to continue to increase. The figures reveal that for the second quarter 2008, there were:

- 30,078 mortgage possession claims issued on a seasonally adjusted basis, 17% higher than in the second quarter of 2007 and with no change than in the first quarter of 2008.
- 28,658 mortgage possession orders made on a seasonally adjusted basis, 24% higher than in the second quarter of 2007 and 4% higher than in the first quarter of 2008.
- 48% of mortgage possession orders were suspended compared to 46% in the second quarter of 2007 and 47% in the first quarter of 2008.

With regard to landlord possession actions, during the second quarter of 2008:

- 37,609 landlord possession claims were issued using the standard and accelerated possession procedures on a seasonally adjusted basis, 2% higher than in the second quarter of 2007 and the same as the first quarter of 2008.
- 28,042 landlord possession orders were made through the standard and accelerated possession procedures on a seasonally adjusted basis, 8% higher than in the second quarter of 2007 and 1% lower than in the first quarter of 2008.
- 40% of landlord possession orders made through the standard and accelerated possession procedures were suspended compared to 39% in the second quarter of 2007 and 41% in the first quarter of 2008.

(Source, Ministry of Justice, Statistics bulletin, 15 August 2008, pgs 2-3)

Furthermore, the number of 'possession orders' issued by county courts in England and Wales between January and March 2008 is more than 17 per cent higher than the same period last year. But in certain areas the picture is much graver. Whilst the biggest casualty is Haverfordwest in Wales where numbers jumped 248%, many parts of the North have been hit by rises of more than 80% including Scarborough, North Yorkshire, Lancaster, Lancashire, Skipton, Skegness and Lincolnshire. Also, latest figures from the Ministry of Justice show that the North West ranks third in the league table of regions with the highest number of mortgage possession orders issued. The

implications of this situation for some of our members is clear with rising waiting lists and calls from home owners in crisis seeking advice and support.

However, the Ministry statistics on court actions cover England and Wales only. Moreover, since many of the orders made will not have been enforced these figures do not reflect how many properties have actually been taken into possession. Figures on properties actually being taken into possession are published twice a year by the Council of Mortgage Lenders (CMLs) and the CML statistics cover the whole of the UK. According to the CMLs, the number of mortgage repossessions rose from 8,140 in the first half of 2006 to 8,860 in the second half, bringing the total for 2006 to 17,000 – 65% higher than in 2005. Moreover, the CML said that there were 27,100 repossessions in the UK in 2007, and it expects a steep rise to 45,000 repossessions in 2008.

The recent increase in the number of home owners facing the threat of repossession is largely a result of the end of fixed term mortgage deals, costlier mortgages, soaring food and fuel bills and limited help available. As debt increases for many home owners they are increasingly under pressure of losing their homes.

Although sale and rent back is a relatively new market, as more and more home owners face spiralling mortgage defaults, can't get remortgages or can't sell as a result of the credit crunch, the benefits offered by sale and rent back (including: providing a solution to people who either need to raise money quickly, are unable to sell their homes, or see it as a way of avoiding repossession) means that this option is increasingly being considered and taken up, by more home owners. A number of firms operating in the unregulated sale and rent back sector including, 'A Quick Sale, and the 'Home owners Advice Centre', two of the larger firms in the UK sale and rent back sector, are seeing an increase in enquires and sales

Due to the likely increase in take up of sale and rent back in the North and other regions over the next 6-12 months, the Consortium is pleased to see that the NLA has drafted a comprehensive Code of Practice which will set out what best practice should be in this sector. We feel that the guiding principles will help protect so-called 'distressed vendors', target rogue operators and address the negative media coverage that has been released in this area to make sale and rent back more ethical and thus a more appealing option to struggling home owners.

However, we also recognise that sale and rent back will not be right in all situations and it should not be seen as some kind of panacea to serious financial difficulty. Although we endorse the concept of a consumer code of practice, we have concerns about whether consumers in difficult circumstances are making well informed choices. We therefore recommend that home owners are signposted and encouraged to explore all other options available to them before they decide on whether or not to take up the sale and rent back model.

Moreover, in spite of the benefits of 'sale and rent back', concerns have been raised surrounding the sector that some home owners have received below market value for their properties, or have been unable to remain in the property due to unaffordable rental costs. There is a core principal at stake here which is that advice to people in financial distress is being given by unqualified introducers who advise sellers but are remunerated by the investor resulting in a conflict of interest in negotiating agreements and price. The person advising does not fully understand the liabilities the distressed seller faces after the sale, and there is no recourse for the seller if things do go wrong. Brokers and lenders risk suffering loss of reputation and financial loss unless these issues are effectively addressed. As previously stated that this market is likely to grow at a fast rate, we feel people will want good advice, and it should be a duty on the industry to ensure people know where to go for that advice.

Initial consultation with our members indicates that some are seeing an increase in mortgage arrears in their area and are witnessing an increase in the number of people presenting themselves as homeless. Some members have also expressed concern over whether sale and rent back is good value for money for people and some members have indicated that they do not feel that they can recommend these schemes to people especially in the light of the Office of Fair Trading's (OFT's) ongoing Inquiry.

With respect to some of our members concerns about sale and rent back, we are therefore delighted to see that the OFT is currently conducting a market study into the sale and rent back sector, with a view to conceding whether it needs to be regulated by a watchdog such as the Financial Services Authority (FSA). The Consortium is supportive of this study and hopes the industry will become regulated if it means 'rogue providers' are flushed out of the market, as ethical providers are currently being "tarnished with the same brush".

We welcome the opportunity to respond to this important consultation paper. Detailed below is our response to the key questions asked by the NLA in their consultation documentation.

General provisions

The definition of "sale and rent back transaction" is intended to be broad in order to try to prevent evasion.

Do consultees agree that the definition is sufficiently clear and sufficiently broad?

Generally, we feel that the definition is sufficiently clear and sufficiently broad enough in order to try to prevent evasion.

"Sale and rent back transaction" is defined to include only people who have been in residence in the property as their homes for the previous three months.

Do consultees consider that period to be too short, too long or correct, and what length would you consider appropriate?

Generally, we feel that only including people who have been in residence in the property as their homes for the previous three months to be an appropriate period. Nevertheless, we feel that more flexibility is needed to cover all cases.

The definition of “sale and rent back transaction” also requires that the property being sold is the vendors only home. That appears to the NLA to be a reasonable provision.

Do you agree?

Mostly we agree with this.

There is a requirement that members not only ensure that staff have copies of the Code, but that they are provided with training in order to help to ensure that they will comply with its contents.

Do you agree that members should have the training obligation?

We strongly agree with this proposal. We feel it is imperative that members are provided with training in order to help to ensure that they comply with the contents of the Code.

We have defined the vendor/tenant as “customer”. Do you consider the definition adequate?

We consider the definition adequate. Many social housing providers now refer to their tenants as customers as part of the governments agenda to give more power to tenants and residents.

Members are responsible for Code compliance even when activities are carried out on their behalf by third parties, for example managing agents. We have in mind that responsibility for breach of the Code lies with the member at all times. If proper care is taken in the selection of third parties who then fail in their responsibilities then that may be a matter for consideration as to how severe a sanction might be imposed on a member in the event of a breach of the Code but we intend that the member be primarily responsible in every way.

Do you agree that this is the right approach?

We have some concerns with this proposal. Whilst in principle we support the view that the member will be primarily responsible in every way for Code compliance even when activities are carried out on their behalf by third parties, we have concerns that full responsibility for breach of the Code lies with the member at all times. We feel that third parties who fail in their responsibilities must take some of the responsibility to ensure that vulnerable

people are guaranteed robust levels of protection. It would be helpful if strict guidelines are written for third parties carrying out activities on behalf of members to minimise risk to members.

Advertising

Do consultees agree that the advertising requirements are clear?

On the whole, we feel that the advertising requirements are clear. However we feel that point 2.4, “*All advertisements and promotional materials must comply with all Codes published by the Committee of Advertising Practice and Broadcasting Committee of Advertising as enforced by the Advertising Standards Authority*” needs further clarification. Inclusion of a web link to the Advertising Standards Authority website to provide further information on their Codes would be helpful.

Moreover, we would wish to be reassured that the advertising material would not simply focus on headlines to grab people’s attention such as “sell your homes fast, or sell and rent until you can buy it back”. It is imperative that publicity material does not overstate promises but ensures links to good advice is also provided to safeguard potential customers.

Entering into the transaction – information and process

The intention is that potential customers be fully and fairly informed.

Do you agree that there are sufficient requirements for the provision of information?

To some extent we agree that there are sufficient requirements for the provision of information. Nevertheless, there are many vulnerable groups in the communities, including: the elderly, disabled, B&ME, young people, alcohol and drug users, those on low incomes and those who struggle to read. We therefore feel it is essential that the NLA is fully aware of the needs of these vulnerable groups and adapts their information and services to ensure these groups are not excluded but are fully and fairly informed. In particular, as several people struggle to read, literacy issues can act as a key barrier. We therefore feel it is essential that all terms of business are written in plain English. Moreover, language and communication can act as a key barrier for customers from different B&ME backgrounds, and effective communication (both written and verbal) is essential in order to ensure all customers fully understand the information provided. We feel that the provision of information in alternative languages where needed should automatically be made available.

Furthermore, we feel that it is essential that customers are not only fully informed of the terms of the Tenancy Agreement and that the member has fully complied with the obligations set out in 3.3 but, that the member makes every reasonable effort to assist the customer to understand the Tenancy Agreement. In particular, we feel it is vital that customers fully understand the

start and end dates of the tenancy period, (or tenancy period if there is no relevant end data), the level of rent and frequency and method of payment required, the amount of deposit and how the deposit will be protected if taken, and most importantly circumstances under which the landlord may seek possession of the property. As previously stated, parts of the North are amongst the biggest casualty in terms of the number of 'possession orders' issued by county courts in England and Wales between January and March 2008 and therefore we would wish to be reassured that only in exceptional circumstances would the landlord seek possession of the property. In particular we feel that this should be the last resort taken and only after all other options have been explored.

Moreover, if there is any doubt as to the customer's level of understanding of the Tenancy Agreement as well as referring the customer to an independent body like the Citizens' Advice Bureau for further advice we would welcome the availability of "housing advice officers" and translators for B&ME groups where needed, to ensure early understanding of the Agreement.

Is it reasonable that members must have local comparables (which they then have to retain and make available if required by the NLA)?

We feel that transparency is an essential guiding principle of the Code of Practice to protect vulnerable customers. We therefore welcome the proposal for a standardised key facts document to be provided by member landlords allowing home owners to compare the deals on offer.

The intention with regard to process is that members will provide all necessary information to a prospective customer and make an offer which the customer will indicate a willingness to accept. It is at that point that the member must provide the full NLA RentBack Certificate which makes it clear that the prospective customer will not be formally contracted to complete the sale and rent back of his property until at least 5 working days have passed. The point is to prevent pressure salesmanship being used against people who are in a vulnerable position.

Do you agree that the requirements are workable and sensible?

We agree that the requirements are workable and sensible.

Do you consider that there is any additional information that should be included in the Certificate, or anything listed to be included in the Certificate that should not be required – and if so what?

We do not feel that there is a need for any additional information to be included in the Certificate. We feel that the provision of the following information is suffice, including: the level of discount being offered, all fees payable by the vendor, the actual market value of the property, clear evidence that the vendor has been made aware their beneficial interest in the property will cease upon sale and a statement of understanding certifying that all terms of the sale have been explained to the vendor. We understand that that

member landlord will also have to provide a written tenancy agreement for the tenant.

Business leads

We are aware that it is fairly common practice for one company or individual to locate a prospective customer but then sell the details of that customer to a third party. Should a member enter into this type of business arrangement we intend that they should not be permitted to sell to a non-member who would not be bound by the conditions of the code.

Do you agree that it is reasonable to restrict a member's sale of business leads to other members?

Yes

Should this provision be more extensive so as to require NLA members never to purchase a lead from a non-NLA member?

Unsure; we feel further clarification is needed around this issue.

It currently appears to the NLA that such requirement would not be necessary because members are required under the draft Code to treat a new business lead in accordance with the rules including taking responsibility for all that has happened before acquiring the lead (and therefore being required to check carefully what the customer has or has not been told and to ensure there is back-up material).

Creating the Tenancy

It is the NLA's view that the purchase and rent back should all take place within the same transaction so that there is no gap between the sale and the coming into force of the tenancy. The definition of sale and rent back transactions is deliberately broader than this to prevent evasion.

Do you consider this arrangement satisfactory?

Yes

There are a number of terms of tenancy which must be stated in writing (although this is not an exclusive list).

Do you consider that these provisions are sufficient to ensure that tenants are fully and adequately informed about the tenancy that they will enter into?

We feel that as a minimum, the terms of tenancy stated in the document must be provided in writing. Many customers who have never been tenants before are surprised at the level of ground rent or maintenance charges imposed, therefore we feel it is essential that the approximate amounts for each such

payments, the frequency with which such payments will have to be made and the method of payment is provided. We also feel it is important to give an indication of the likely increase in payment charges for the forthcoming 5 years, to ensure customers are made fully aware of how much extra they will likely have to pay in the future for such services.

Providing easy contact in an emergency is essential. Not everyone has access to a computer therefore we feel that at the commencement of the tenancy the member should provide the customer with both a telephone number and an email address rather than just one or the other. Also, in addition, we feel staff contact names should also be provided.

The NHC recognises the importance of prompt take up Housing Benefit (HB) for customers who are entitled to this to combat debt. We therefore feel it is vital that the members gives adequate and effective assistance as is required by a local authority to enable a customer to claim HB, Local Housing Allowance, or associated state assistance.

Do you consider that the requirements imposed on members at the commencement of the tenancy are adequate, inadequate or too burdensome?

Largely we feel that the requirements imposed on members at the commencement of the tenancy are adequate. However, as previously stated, we feel that members should be required to provide an indication of the likely increased costs for ground rent or maintenance charges projected over the next five years.

A provision has been included to allow customers to appeal to the NLA Board in respect of rent rises above RPI. Separate rules will be prepared in respect of those rent appeals. The intention is that the NLA Board will consider whether the increased rent being demanded is beyond a reasonable band of acceptable rents. It is not intended that the NLA Board will set specific rent levels in respect of specific properties. The intention is to quash rent increases which are plainly excessive.

Do you consider it a sensible proposal for the NLA to deal with rent appeals on this basis?

We support the proposal that members must not include clauses in any agreement which require rent increases by reference to rises in interest rates. Furthermore, whilst we agree that increases in rent level must not significantly exceed Retail Price Index figures, we feel it would be helpful for the NGL to be more specific about how they determine “*must not significantly exceed RPI figures*”.

Where a customer appeals against a rent rise the NLA will deal with that appeal promptly but there will be an inevitable delay during which rent will be due. Accordingly a provision has been included to deal with that situation. The view of the NLA is that an increase to RPI should be collected but any

increase requested by the member/landlord above that level should not be payable by the customer/tenant until the end of the appeal. At the end of the appeal the tenant would then either owe for the money or be entitled to a refund or credit.

Do you consider this proposal to be sensible?

We feel that this proposal needs further clarification. How would a customer be entitled to a refund or credit when they don't appear to have to pay the extra until after the appeal?

Maintaining the Tenancy

Do you consider that the obligations on members as expressed represent a sufficient, insufficient or over-burdensome provision?

We consider that the obligations on members as expressed represent a sufficient provision to ensure that it would be difficult to sell the property expressly to realise a capital gain at the expense of the tenant.

It is intended that the members will not use no fault possession procedures (e.g. section 21 of the 1988 Housing Act in England) in any circumstances other than where, by reason of the tenant's failure to abide by the terms of a tenancy the member would be entitled to possession of the relevant premises under the provisions of the Housing Act 1988. Not only would the no-fault procedure to give straightforward notice not be available for use by members but nor would any ground for possession that does not entail misbehaviour on the part of the tenant, for instance the redevelopment ground. This part of the Code represents the major central restriction on member's freedom to act in the same way as other landlords.

Do you consider this to be a satisfactory provision?

Yes

Records

In order to be able to properly police the Code for the benefit of the reputation of all NLA RentBack members, there are tough provisions about retaining documentation relation to transactions and to providing the records when required by the NLA. The NLA recognises that these are severe provisions but regards them as necessary.

Do you agree?

To some extent; if the NLA regards tough provisions about retaining documentation in relation to transactions and to providing the records when required as necessary, we feel that the retention by members of all records relating to any transaction to which this Code applies for the period of six years is not excessive. Nevertheless, we feel that it is imperative that the NLA

make it very clear to members that they require strict record keeping and facilitate this as far as possible to aid responsible record keeping.

Complaints

The general proposal is that a member should have easily accessible and effective in-house complaints procedures for dealing with customers.

Do you agree that the in-house procedures set out are reasonable?

In many respects, we feel that the in-house procedures set out are reasonable. We agree that it is essential that members have an in-house complaints procedure for dealing with complaints from customers about alleged non-compliance with this Code. However, we feel that it would be more helpful for the NLA to be more descriptive and to specify what they mean by taking reasonable steps to publicise access to their in-house complaints procedures in pre-contract, point of sale and contractual documentation. Moreover, we feel that the NLA should define “*reasonable timescales*” and preferably, provide details of specific timescales for dealing with complaints.

Conciliation

In the event that the in-house procedures are unsuccessful then there is a conciliation process through the NLA. Again details of the process would be provided later on the basis that it is agreed that the general structure of the complaint conciliation and redress process is regarded as sensible.

Do you agree that conciliation through the NLA is a sensible proposal?

Yes

In the event that conciliation is unsuccessful the matter may be referred to an independent redress scheme which we will consider whether the customer/tenant should be entitled to redress.

Non Compliance

The NLA intends to set up a Disciplinary Board which will include NLA directors and independent people who have no connection with the NLA. That board will consider members conduct in relation to the code. Cases may arrive with the disciplinary board in a number of ways – either from failed conciliation or from the independent redress scheme or simply through monitoring or other information becoming available to the NLA. It is then intended that there be a fair process under which an investigation would be carried out into the members conduct. The documents relating to a particular transaction or set of transactions can be called for and examined (and it will be a serious breach to fail to produce papers). A clear case will be put to members if a breach of the code is alleged and a fair opportunity will be provided to the member to put his case.

Decisions made may include one or more of the list of sanctions set out and all decisions will be published in fully reasoned form so that it is clear what it is that has been identified as the breach of the code, how seriously it is viewed and what sanction has been applied. The NLA considers it to be important that the public are able to see that the NLA's disciplinary process is operated in a reasoned, fair and visible way.

Do you agree with the intended form of arrangements?

Yes. It seems reasonable that allegations of non-compliance made by a customer should, in the first instance, be considered under the member's in-house complaints procedures.

Do you agree with the range of sanctions – do you consider that there are sanctions listed which should not be applied or that there are sanctions which should be included in the list which are not currently included.

We agree with the range of sanctions.

Do you agree that a fully reasoned decision should be provided and that the decision should be published?

We agree that a fully reasoned decision should be provided and that the decision should be published.

Conclusion

There are many proposals of merit in the consultation document '*Sale and Rent Back Code of Practice*'. It is essential that in the current economic climate characterised by rising numbers of repossessions a range of measures are put in place to help vulnerable home owners remain in their own homes and to protect them from rogue landlords. We feel that ethical sale and rent back provides a useful alternative housing option for some vulnerable home owners across the country struggling to stay in their homes. We therefore welcome the NLA commitment to developing a Code of Practice to ensure ethical sale and rent back to protect vulnerable customers, whilst also offering a worthwhile investment opportunity for landlords.

In particular, we are pleased to see that the aim of the draft Code is to ensure that prospective customers are given clear and accurate information in order that they can properly understand the transaction and its consequences. We also favour the move to provide training to members to help ensure that they comply with the contents of the Code.

Whilst we agree in principle that members should be responsible for Code compliance when activities are carried out on their behalf by third parties, we have some concerns that responsibility for breach of the Code lies with the members at all times. We also feel that it is essential that further consideration is given to the specific needs of vulnerable groups when advertising sale and

rent back and to ensure all customers fully understand the terms and conditions of the Tenancy Agreement. Effectively addressing literacy, language and communication barriers (written and verbal) is essential to protecting the interests of all customers.

The Northern Housing Consortium is pleased to have been given the opportunity to respond to this important consultation and we also look forward to seeing the possible outcomes (encourage the development of a consumer code of practice) following the OFT's timely market study into sale and rent back arrangements to ensure that home owners entering such arrangements are adequately protected and making informed choices due for completion in September.

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