

# Supporting people to exit homeownership through a voluntary or assisted voluntary sale

## A good practice guide



# About this guide

This guidance was prepared by the National Homelessness Advice Service (NHAS), drawing upon the research commissioned from Alison Wallace, Deborah Quilgars and Janet Ford of the Centre for Housing Policy, University of York.

The NHAS and Shelter published a research report in 2011 exploring the exit routes people were taking to get out of homeownership and avoid possession.<sup>1</sup> It also examined the support that lenders offered them to sell their properties in this process. The guide comes out of this research and aims to help advisers and local authority housing options staff who are supporting clients with mortgage debt.

Providing information on the relatively new development of ‘assisted voluntary sales’ (AVS), our guide will enable you to support households who choose or are required, as borrowers, to exit homeownership because they can no longer manage their mortgage payments and the mortgage is unsustainable. You should read this in conjunction with other guidance from the NHAS, Shelter, and Citizen’s Advice on debt, benefits and housing policy.

Further resources for advisers are available by visiting websites [nhas.org.uk](http://nhas.org.uk), [shelter.org.uk](http://shelter.org.uk) and [citizensadvice.org.uk](http://citizensadvice.org.uk). Members of the NHAS can access resources via the NHAS member’s pages. NHAS members may also seek support on many of the issues raised in this guidance by using the relevant Consultancy Line (NHAS Agency or Local Authority advice lines – details on NHAS web pages).



<sup>1</sup> Research report: Exiting unsustainable homeownership – understanding current practice and the potential of Assisted Voluntary Sales, University of York, September 2011

# I: Background information

## Finance environment

Some lenders have made changes to the way mortgage arrears are managed, taking into account their evolving business concerns and new regulatory pressures from the Financial Services Authority (FSA) – capital adequacy rules and greater scrutiny of arrears management. Lenders are increasingly revising their forbearance offer, needing to carefully consider medium- to longer-term sustainability of individual mortgage accounts where the borrower is clearly struggling financially. The FSA has been concerned that some lenders continue to agree a forbearance approach, without properly taking into account the borrower’s medium-term or future prospects to repay the loan.

Access to some earlier Government-led schemes has also been reduced now, eg Support for Mortgage Interest and the Mortgage Rescue Scheme. With fewer options available, for many households with an unsustainable mortgage debt it may be more suitable to exit homeownership and secure alternative accommodation instead.

## Exiting homeownership – what to be aware of

Advantages for borrowers selling their home before it is repossessed:

- An exit strategy offers greater control in the transition to renting.
- A higher sale price may be achieved, preserving equity or minimising shortfall debts.
- The borrower can avoid the trauma associated with the county court process and eviction.
- The Pre-Action Protocol for Possession Claims based on Mortgage or Home Purchase Plan Arrears in Respect of Residential Property – paragraphs 6.2 and 6.3 – clarifies that lenders should postpone possession action where there is evidence that a borrower is taking active steps to market the property. However, it is the borrower’s responsibility to provide evidence of the steps being taken and that the property is being marketed at a reasonable price. See [www.justice.gov.uk/guidance/courts-and-tribunals/courts/procedure-rules/civil/contents/protocols/prot\\_mha.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/courts/procedure-rules/civil/contents/protocols/prot_mha.htm)

Barriers to borrowers selling the home could be:

- the home is in poor repair
- they are unable to afford the selling costs (eg energy certificate, agent and solicitor fees)
- the sale price may not cover the mortgage
- they could have ill health and/or inability to cope with the sale process
- they don’t know they can sell the home when they have mortgage arrears
- the current market may affect the length of time and ability to sell
- uncertainty about rights to local authority rehousing once the property is sold
- they lack knowledge of alternative accommodation, eg access to private rented sector (PRS) accommodation.



To remove some of these barriers, a number of lenders have begun to offer support to borrowers so they can sell their home and avoid repossession. This support package may be called 'assisted voluntary sales' or 'voluntary sales'. In practice, however, there is no single model of support. That's why it is important for you and the household you are advising to know exactly what to ask the lender, to work out what level of support they can offer to achieve the best outcome for the borrower.

## What support can lenders offer?

Some lenders may only offer informal support to borrowers, but others may be able to provide more detailed and structured support depending on a borrower's individual needs.

The range of support on offer from the lender might include:

- allowing the borrower time to sell (this varies, with lenders offering anything from three, six, nine or up to 12 months)
- agreeing to concessionary (reduced) mortgage payments and a halt to any litigation
- reimbursing or covering solicitor and/or estate agent fees
- the services of an asset manager to act as a 'proxy vendor', helping to progress the sale
- providing a deposit and rent in advance, to secure alternative PRS housing.

**Remember: not all lenders have clearly embedded 'assisted voluntary sales' schemes. However, by indentifying the level of support a household may need, you can work with the lender to determine the help available and proactively support them in a planned exit from homeownership.**

A lender could require one or more of the following criteria to be met, so these factors need to be considered in advance of a planned exit:

- being in arrears
- having exhausted all other options
- all borrowers (legal owners named on the property) need to agree to the sale (so this might exclude arrears cases prompted by relationship breakdown)
- negative equity
- no second charges secured on the property
- full co-operation by the borrower.

Some lenders have used this list to develop a more formal entry criteria to their assisted sale scheme or the support they provide to exit homeownership.

Some lenders may consider an assisted sale before there are arrears emerging, if it's clear to them that the mortgage is no longer affordable, and/or may also support sales where there is positive equity. Others may only offer to help borrowers sell as a last resort and only for those who are in negative equity.

Many lenders who don't have a formal AVS scheme may be open to 'ad-hoc' requests for assistance if the borrower is committed to selling their home, but unable to effect a sale by themselves.



**Remember: there are no fixed criteria for the assisted sale offer. Each lender will consider the best course of action, on a case-by-case basis, informed by the issues you identify and decide upon when working with the household.**

A key factor in getting the lender's support will be by showing that the household/borrower is fully committed to selling their home to resolve their debt problems and avoid possession. Lenders will be wary of any borrower simply trying to use an assisted sale scheme to delay possession action.

## What benefits does an AVS scheme offer the household?

By agreeing to a voluntary sale, the borrower may find:

- less stress as a result of avoiding repossession and the sudden loss of their home
- lower shortfall debts
- less disruption to their work or the children's schooling, since the move will be planned
- more likelihood of a positive outcome where an application for social housing is made to the local authority
- they may achieve a better sale price from their home.

It will be important for you to work with the lenders and local authority to identify the benefits of an assisted sale as an appropriate exit for the borrower from unsustainable homeownership, and to ensure there are adequate rehousing options available for the household to move into social or private rented sector housing.



# II: Step-by-step guidance for exiting homeownership

## 1. Deciding to exit homeownership

It can be a really hard decision to make, but it is important for the householder to come to terms with their financial situation and its difficulties, and be reconciled to moving out of homeownership into renting. Failing to be reconciled will only increase anxiety and can undermine an effective exit for the borrower, increasing the risk of the home being repossessed.

What you can look at to help the household make the most appropriate decision:

- Follow the maxim: **maximise** income, **minimise** outgoings, **prioritise** payments (this will determine whether the mortgage is sustainable for the borrower).
- Are house values rising, remaining the same or falling locally?
- How could equity diminish, or shortfall debts increase, when the value of the home changes in relation to an increasing mortgage debt?
- Has the lender indicated that they will move to possession proceedings as the next course of action?
- Does the borrower have future prospects of recovering their former financial position and what further forbearance options will the lender consider?
- Is it in the best interests of the borrower to continue with homeownership – is the mortgage sustainable in the medium- to long-term? Weigh up the needs of the household to remain in the property, balanced with any requirement of the lender to end forbearance and take action to repossess the home. Is it better to encourage the borrower to exit homeownership?
- Work out if continued forbearance is leading to an unsustainable level of arrears, which may (a) put the home at risk in the future or (b) become too much of a burden for the household.
- How will the borrower repay an 'interest only' loan?
- How realistic is it that the borrower's circumstances will change for the better in the near future? (Consider the local economy, the borrower's age, household dependants, their health and willingness to change their lifestyle.)
- To what extent can the borrower (and their family members) live with the continued uncertainty?
- What are the alternatives (other housing options) to meet the household's accommodation needs?
- Assess the housing market values in the area and the extent to which the mortgage debt is increasing as payments are continually missed or not met in full.

(This list is not exhaustive.)



## 2. Ways to exit homeownership

Once you and the borrower have assessed the sustainability of their mortgage, and come to a decision that homeownership is unsustainable, look at the pros and cons of each available exit option:

### ■ Voluntary sale

The borrower puts their property on the market for sale, independently, and repays the loan from the proceeds. In cases where negative equity exists, the borrower seeks permission from the lender for them to release the charge on the property and agree to repay the lender any resulting shortfall debt (often termed 'short sales').

**Positives:** The borrower keeps control of the sale. They may have time to plan a move to alternative accommodation and may achieve a higher value for the home than if they sold it as an empty property following possession. A voluntary sale may be less damaging to their credit rating. They can also be considered for rehousing through a homeless application.

**Negatives:** All costs associated with the sale are met by the borrower. The borrower may be unable to fund the costs upfront, eg energy performance certificates, or in the case of homes in negative equity be unable to assure the estate agent and solicitor that their fees will be met on completion.

When the borrower approaches the local authority for rehousing, the local authority has to consider the actions taken by the household very carefully and should not automatically presume the household is intentionally homeless because they have sold the property voluntarily.

The local authority will need to consider the reasons why the borrower got into mortgage arrears and assess whether the property was affordable when any mortgage or secured loan was taken out on it, and what happened to the borrower that meant they were no longer able to maintain payments. (Relevant case law that can be helpful to consult as precedents are *Hillingdon v Tinn*, *Watchman v Ipswich Borough Council*, and *William v Wandsworth LBC*.)

When advising on potential homeless applications, you should also refer to Homelessness Code of Guidance, paragraphs 8.29 and 11.20, and the DCLG Supplementary Guidance on Intentional Homelessness (August 2009). See [www.communities.gov.uk/publications/housing/intentionalhomelessnessguide](http://www.communities.gov.uk/publications/housing/intentionalhomelessnessguide)

NHAS members are advised to seek specialist advice from the NHAS Consultancy Line when advising households around potential homeless applications, where there is a risk of an intentional homelessness decision.

### ■ Voluntary possession

The borrower returns the keys to the lender, either before or during the process of possession proceedings.

**Positives:** The borrower may feel in control of the timing of an exit.

**Negatives:** The value of an empty property after possession may be lower than if the borrower had sold the home themselves while in occupation. There is a risk of shortfall debts potentially increasing. The borrower's credit rating will be damaged in the same way as if compulsory possession had occurred.



Unless it's clear that the mortgage was unsustainable through no fault of the borrower, they may be found intentionally homeless for voluntarily relinquishing their home before the lender has taken any action. You should refer to the DCLG Supplementary Guidance on Intentional Homelessness (August 2009), paragraphs 4 and 10–12, seeking specialist advice when advising households. See [www.communities.gov.uk/publications/housing/intentionalhomelessnessguide](http://www.communities.gov.uk/publications/housing/intentionalhomelessnessguide)

### ■ Mortgage Rescue Scheme (MRS)

The borrower is able to remain in the home, either retaining homeownership with an equity loan or by becoming an assured shorthold tenant of a housing association.

**Positives:** Possession is avoided, and stress and disruption of leaving the home and local networks removed. If the borrower qualifies for the Government mortgage-to-rent option, the rent charged is usually below market rates (an affordable rent) and by a reputable landlord (housing association) that potentially offers a longer tenancy than in the private rented sector (minimum three years, fixed term). The housing association may also undertake a range of repairs.

**Negatives:** The borrower must be in priority need (eg have ill health, disability or dependent children in the home) and the property value must not exceed the MRS regional property caps (you can refer to MRS guidance to determine the level of caps in your area).

Equity requirements for borrowers wishing to remain homeowners and access **MRS equity loans** are relatively high, and the household will require between 25 to 40 per cent equity to access this type of equity loan (and they must also meet the relevant MRS priority need requirements). Funding for MRS is limited, so there are fewer opportunities to enter the scheme.

The MRS final property sale value achieved under the **Government mortgage-to-rent** option of the scheme is set at 90 per cent of the actual independent valuation figure. Borrowers therefore need to be prepared to complete MRS with greater shortfall debts (or receive less equity) than if they sold voluntarily or let the property go to compulsory possession (where the lender may attract a higher sale price than at an MRS completion).

The borrower must have clear-cut reasons for remaining in their home. If the borrower currently under-occupies their home, they may fall foul of future housing benefit rules that cap housing benefit payments.

### ■ Compulsory possession

The borrower loses the home through repossession where, through a litigation process, possession of the property is legally passed to the lender.

**Positives:** It may bring the stress of prolonged arrears and court hearings to an end, enabling the household to move on to more sustainable housing and financial circumstances. However, in some cases the court may make a postponed or suspended possession order.

**Negatives:** Control is given to others. The notice for eviction following the making of a court order is relatively short, allowing little time to find alternative accommodation. Costs of litigation and eviction warrants are passed to the borrower, in addition to costs incurred by the lender in securing, maintaining





and marketing the property for sale. The emotional strain of the court process, and public notices of possession being placed in the property, may impact on the health of the borrower.

Households could be found intentionally homeless by the local authority unless previous considerations show they did something or failed to do something that resulted in the repossession.

Financial outcomes may compare poorly to selling the home independently, as the property may receive a lower sale price than if it had been sold with the borrower in occupation, thus increasing shortfall debts or reducing equity.

### ■ **Assisted or supported voluntary sale**

Some borrowers may be able to get support from their lender to sell their property to avoid possession, eg through the appointment of an asset manager and/or in marketing the property. The borrower must co-operate with the lender, asset manager (if appointed), estate agent and solicitor to progress the sale.

**Positives:** The borrower receives help to sell, and should have time to plan alternative accommodation. Concessionary mortgage payments may allow the borrower to save for a deposit in the private rented sector. Selling costs may be met by the lender. The borrower may be relieved of some of the burden of the situation, maintaining a public semblance of normality by selling in a routine fashion rather than suffering the humiliation of public possession. The sale price might be higher than if the property was sold empty through possession proceedings.

By selling with the lenders' formal support, it may be easier for the borrower to demonstrate to the local authority that the household's mortgage situation was unsustainable and the next step would have been repossession.

**Negatives:** There is no automatic right to support from the lender to sell. Not all lenders offer it and, among those who do, the borrower may have to meet certain entrance criteria for their support. Schemes go some way to resolving mortgage debt problems but, currently, rarely address a borrower's critical concerns about rehousing options.

Some lenders may not offer support to sell if there's a second charge on the property or the second-charge lender has not agreed to release their charge over the property, or if former partners (through relationship breakdown) do not agree to the sale.

**Remember: not all lenders will offer a formal type of AVS scheme, although those that don't may still consider ad hoc requests for support.**



### 3. Achieving a planned exit from homeownership – working with the household

The household may feel comfortable with marketing the sale independently, but there may in any case be advantages for the borrower to enter into a lender's assisted sales scheme, if available.

**Remember: there is no automatic entitlement to assistance from a lender to help the borrower sell the property, and lenders do so at their discretion.**

To enable the household to make an informed decision, you should assess the following:

#### ...with the household

- Does the borrower feel competent to market and sell the property independently?
- If not, what assistance does the borrower need (eg upfront sale costs, assistance with solicitor's and estate agent's fees, or assistance to get the property ready for marketing)?
- If the borrower has co-operated with the lender to-date, will the lender be agreeable to support a sale to avoid possession (obtain a brief history of forbearance agreements and reasons if any were broken, so you can discuss any support options with the lender)?
- Does the borrower understand that the property needs to be marketed at a price that will sell in a reasonable period? The lender may lose patience if the property is marketed at too high a price, resulting in the property remaining unsold on the market for ages, so lenders may view the borrower as only trying to 'buy time' and avoid repossession.
- Is the borrower aware of their obligations in engaging with a lender's formal assisted sales scheme? Typically they must co-operate with the lender by meeting agreed payments while the property is on the market, provide documents and answer queries promptly from solicitors and estate agents (or asset managers if appointed), be available for viewings, present the property positively and remain in the property until it is sold.
- Some lenders will be clear about any shortfall debts that may arise once the property is sold, offering certainty by freezing them at the initial valuation. In this situation, does the borrower understand that if the price of the property is lowered to achieve a sale, their debt does not rise accordingly? The borrower who is confident in selling independently may wish to consider the benefits of a lender's assisted sale scheme compared to just going ahead with a sale on their own. The borrower needs to weigh up if there are clear benefits to being on a lender scheme in relation to the likely outcome. This will need to be considered in conjunction with any strategy to manage debts once the property is sold.
- Does the borrower understand the advantages and disadvantages of signing an undertaking to repay shortfall debts in advance of the sale completing?
- Is there a second-charge lender who may commence possession action while the borrower is trying to sell the property, and does the borrower need to apply for a Time Order to prevent this? Where an application for a Time Order is relevant, you should seek specialist advice.



- A borrower who wishes to pursue social housing may also consider entering into a lender's scheme, if available, as they may find it easier to demonstrate that the sale of their home is a last resort to avoid possession if selling with the lender's support rather than independently.
- Will the borrower need help finding rent in advance or a deposit? Sometimes lenders also support the borrower with these upfront payments, to facilitate entry to the private rented sector.
- Has the borrower secured agreement to the sale from any former partner in the case of relationship breakdown? Does a Matrimonial Causes Act or Trusts of Land and Appointment of Trustees Act [1996] application need to be made to allow the sale to proceed? Where these types of applications are relevant, you must seek specialist help to advise the household fully.
- Has the borrower got agreement from any second-charge lenders for their charge on the property to be released so the sale can proceed?
- Is the borrower aware of any sanctions if they drop out of the scheme before a sale is achieved?

### **...with the lender**

- Will the lender withhold litigation to give the borrower time to sell? If not, can the court process be used to secure time to sell (refer to the Mortgage Arrears pre-action protocol, paragraphs 6.2 and 6.3)? See [www.justice.gov.uk/guidance/courts-and-tribunals/courts/procedure-rules/civil/contents/protocols/prot\\_mha.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/courts/procedure-rules/civil/contents/protocols/prot_mha.htm)
- Will the lender agree affordable/concessionary payments until completion?
- What information does the lender require from the borrower to demonstrate the sale is genuine and being marketed appropriately (ie estate agent's particulars, RICS valuation of property)? Some lenders conduct their own market appraisal or valuation to check the sale price is realistic.
- Does the lender want to monitor the sale's progress? If so, does the lender require the borrower's permission to monitor the sale's progress directly with the estate agent?
- Will the lender agree to a 'short sale', where negative equity exists?
- Will the lender offer any assistance to help the borrower sell their home to avoid possession? What help is available?
- Can the lender be flexible to overcome any particular barriers for the borrower?
- If assistance is offered to meet the cost of fees (eg energy performance certificates, solicitors and estate agents), are these costs absorbed by the lender or taken from the borrower's settlement figure on completion? (Lenders often have a cap on the amount they will pay for agents or solicitors.)
- Does the lender arrange to appoint its own agents, solicitors etc?
- Does the lender provide an explanation of their assisted voluntary sales scheme, and any terms and conditions in writing?
- What criteria must the borrower meet to receive the lender's support? What are the consequences for the borrower of non-compliance with these terms and conditions (ie will the borrower be liable for any costs incurred if they drop out of the scheme prior to completion)?
- What are the obligations or roles of all parties involved in the sale?



- Is an asset management company used and what is their role in the process? They should act as a 'proxy vendor' arranging the valuation, agreeing the marketing strategy with the borrower as well as the lender, appointing the estate agent to market the property and progressing the sale through to completion, co-ordinating the input of both lender and borrower.
- How is the market price of the property agreed? How is the borrower involved in this decision? If there is a dispute between the borrower, lender, estate agent, and/or asset manager regarding the valuation and marketing price of the property, will the lender pay for the borrower to obtain a further independent RICS valuation?
- What happens if a sale is not achieved in the specified period?
- When and how will any reductions in the price be agreed with the borrower?
- Will the borrower be given a named contact person working for the lender (and asset management company, if appointed)?
- Will the lender agree to support the sale, if the agreement of third parties with interests in the property has been obtained (ie second-charge lenders and former partners following relationship breakdown)?

**Give the borrower information about how to overcome these obstacles, eg the borrower can make a Matrimonial Causes Act or Trusts of Land and Appointment of Trustees Act [1996] application following relationship breakdown. Can the borrower fund this action, or be entitled to Legal Aid? Where this type of application is relevant, you should seek specialist advice.**

- What is the lender's appetite to proceed with a sale of the property where a second-charge lender is potentially a barrier to the sale going ahead?
- Will the lender consider a request to provide assistance with rental deposits or rent in advance, to smooth the transition out of ownership and into renting? If not, can they allow the borrower to pay reduced payments, so they can save for a deposit and rent in advance themselves?
- How will the lender deal with any shortfall debts? At what stage will they open negotiations with the borrower regarding the level of debt and repayments?
- Is the lender willing to freeze or write off a portion of the borrower's debt, or agree affordable repayments for any shortfall debts? Will the lender require the borrower to sign an undertaking to repay the shortfall debts in advance of the sale completing?
- Is there a second-charge lender who may commence possession action while the borrower is trying to sell the property – does the borrower need to apply for a Time Order to prevent this? Where an application for a Time Order is relevant, you should seek specialist advice.
- Recommend to the lender that they refer the household for independent money advice when the borrower enters an assisted sales option with them.
- Ask the lender to signpost on to the local authority at an early stage, to discuss the household's rehousing options.



## 4. What are the rehousing options? – the benefits of a planned approach

A holistic approach that considers the household's housing options on exiting homeownership is very important. You should work closely with the household to determine all the factors that led to the conclusion that homeownership was unsustainable. That way, you can find out if the household is in any way responsible for the loss of the home and therefore may not be owed a full housing duty by the local authority if the household presents as homeless.

You must also determine the priority need status of the household, to know what level of support the local authority ought to offer.

Work with the household to find out what other housing solutions may be available to them (eg access to PRS housing), and determine the costs involved in accessing this accommodation.

Voluntary sales (which may include 'assisted' voluntary sales), gives the borrower time to plan a move from homeownership. However, in practice there may be only a few weeks between an offer and completion of the sale to arrange alternative accommodation. The borrower may take up a rehousing option in either the social or private rented sector and drop out of the sales scheme, if they feel they ought not to refuse the opportunity. But, does the borrower know they may then incur additional costs, and it raises the possibility of the home being sold at a lower price as an empty property that has been taken into possession?

It is important to synchronise an assisted sale with rehousing options, to enable the household to meet their alternative accommodation needs, as well as solve their financial issues regarding the unsustainable mortgage debt. The borrower may opt for either social or private renting. At the outset, you should identify the borrower's preferences for either of the rental sector housing, and note if the household has a priority need in relation to the local authority duty to provide accommodation.

At the moment, former borrowers can access social housing via the waiting list or by making a homeless application; or they can access the private rented sector directly, or with some help from the local authority or a lender to pay the rent deposit and rent in advance.

Advisers need to be aware of planned changes to social housing provision. The Localism Bill is likely to allow local authorities to discharge a homeless duty by offering private rented sector accommodation and further restrict access to social housing tenancies by changing the way their allocations scheme operates, so try to get households to understand what these changes may mean for them.

It's quite possible that social tenancies in the future will be offered to households on a short-term basis (eg a two- to five-year tenancy), at an intermediate 'affordable' market rent (eg priced at 80 per cent of market rates for the area).

To find out what will be best for your client, you need to consider:

- the borrower's housing preferences and needs
- the borrower's likely financial circumstances after the sale has completed. What will their new debt commitments look like? Will they be entitled to housing benefit? Take into account the impact of changes to housing benefit (the limits, ie caps to payments and entitlements, under-occupation and non-dependants)



- where a household receives more than a £6k lump sum from equity from the sale, you will need to advise them on how this will affect their benefit entitlement until their savings reduce below £6k (you should always check benefit entitlement rules in relation to the particular household)
- what resources can the borrower draw upon to secure access to the private rented sector?
- do they have access to family or support networks to fund a deposit/act as guarantor on the rent etc?
- will the lender agree to reduce mortgage payments during the sale so the borrower can save for a deposit?
- is there suitable affordable private rented sector accommodation locally? And will landlords of suitable properties accept housing benefit claimants, if the household is eligible?
- will the revised local housing allowance (LHA) rates in the area enable accommodation costs in the PRS to be covered by LHA or will the household need to make up the shortfall between their LHA payments and the rent they must pay in PRS housing?
- what assistance will the lender or local authority offer to help the borrower move to private rented accommodation, if they do not have sufficient funds themselves for a deposit or rent in advance? Will the lender's asset management companies identify suitable local landlords and properties for the household to move to?
- if the borrower has a preference and can demonstrate a need for social housing, can they secure housing through the local authority waiting list? What priority should they be given? Are they able to bid for properties and understand how the allocation process or the choice-based letting system works?
- will the local authority consider an application under homelessness legislation or be proactive and work with the household to prevent homelessness, by helping them secure other suitable accommodation in time for the sale completion (which may be achieved via a housing options approach)?
- that the voluntary sale should not by itself be a factor in the local authority's decision as to whether the borrower has made themselves intentionally homeless. In advance of a sale and an application being made by the borrower, it may be helpful to secure written confirmation of the household's agreement to a voluntary sale with the lender, outlining that this has been agreed as the best strategy for dealing with the mortgage debt. This may help to avert the local authority finding them intentionally homeless because they have given up their home voluntarily
- that the borrower needs to be made aware that the local authority has to satisfy itself that the household has not contributed to their inability to afford the mortgage through their own actions (ie by over-borrowing or over-spending, or by gross misconduct leading to a job loss), otherwise an 'intentionally homeless' decision could still be made
- that the household can approach the local authority to discuss a potential homeless application in advance of the 28 days prior to a sale completion, providing documentation from the lender to demonstrate that possession would be the end result if the sale was not agreed. Doing this early on would enable the local authority to work with the household, to secure suitable alternative accommodation. If you and the borrower feel the household's best interests is to move to social housing, ensure the borrower is fully aware of their potential rights.



## 5. Arranging for debt advice

Following completion of a sale of the property, many households are likely to remain indebted. They will still need specialist debt advice, regarding the management of creditors plus advice about bankruptcy and/or Individual Voluntary Agreements (IVAs) if they have surplus income or assets, or Debt Relief Orders (depending on their level of debt).

It is preferable for your client not to exit homeownership without a strategy being in place to deal with their remaining debts. You may need to refer them for debt advice to enable this plan to be put in place.



[nhas.org.uk](https://nhas.org.uk)

# Glossary of terms

## **Bankruptcy**

The Official Receiver or an insolvency practitioner is appointed to take over the handling of an individual's financial affairs for the benefit of her/his creditors.

## **Debt Relief Orders (DROs)**

DRO is an order that can be applied for by people who can't afford to pay off their debts. It is granted by the Insolvency Service and is cheaper than going bankrupt. It applies to people on a low income who have debts of £15,000 or less.

## **Forbearance**

A range of options made available by lenders to assist homeowners in mortgage arrears.

## **Individual Voluntary Agreements (IVAs)**

IVA is a legally binding formal arrangement between an individual and the majority of her/his creditors. The arrangement allows the individual to either defer payment of her/his debts and/or for the creditors to accept less than 100 pence in the pound.

## **Legal Aid**

Only households within specific income ranges and circumstances may apply for help under Legal Aid. Advisers will need to understand this eligibility if making a referral to a provider funded under the legal aid scheme.

## **Local Housing Allowance**

A rental figure used for calculating housing benefit in the private rented sector (linked to the size of the accommodation and the accommodation needs of the household), which varies from property to property and area to area (known as Broad Rental Market Areas).

## **Localism Bill**

A bill currently going through Parliament, part of which will have an impact on local authorities' homelessness duties if/when it becomes law.

## **Negative equity**

This exists when a property is valued at less than the amount owed on all the charges registered against it.

## **Property caps**

Homeowners are not eligible for the Mortgage Rescue Scheme if their properties are valued above a certain level, which varies from region to region.

## **Shortfall debts**

An amount still owed on a mortgage or loan secured against the property, following its sale.

## **Time Order**

An Order made in the county court that can vary the terms of loan agreements regulated by the Consumer Credit Act, 1974 (s129 relates to Time Orders).

The NHAS is a Shelter and Citizens Advice service. It runs a Mortgage Debt Advice service and is supported by the Department for Communities and Local Government.

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