

Shelter's response to the Office of Fair Trading consultation –

Second charge lending – OFT guidance for brokers and lenders

From the Shelter policy library

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Shelter

Shelter is a national campaigning charity that provides practical advice, support and innovative services to over 170,000 homeless or badly housed people every year. This work gives us direct experience of the various problems caused by the shortage of affordable housing across all tenures. Our services include:

- A national network of over 20 advice centres
- Shelter's free advice helpline which runs from 8am-8pm
- Shelter's website which provides advice online
- The Government-funded National Homelessness Advice Service, which provides specialist housing advice, training, consultancy, referral and information to other voluntary agencies, such as Citizens Advice Bureaux and members of Advice UK, which are approached by people seeking housing advice
- A number of specialist projects promoting innovative solutions to particular homelessness and housing problems. These include housing support services, which work with formerly homeless families, and the Shelter Inclusion Project, which works with families, couples and single people who are alleged to have been involved in anti-social behavior. The aim of these services is to sustain tenancies and ensure people live successfully in the community.
- A number of children's services aimed at preventing child and youth homelessness and mitigating the impacts on children and young people experiencing housing problems. These include pilot support projects, peer education services and specialist training and consultancy aimed at children's service practitioners.
- We also campaign for new laws and policies - as well as more investment - to improve the lives of homeless and badly housed people, now and in the future.

Introduction and general comments

Shelter welcomes the opportunity to comment on the draft Office of Fair Trading (OFT) second charge lending guidance. Arrears and repossessions have risen dramatically as a consequence of the credit crunch and Shelter has seen a large increase in the number of clients seeking advice on these issues. The Finance and Leasing Association estimates that approximately 1750 second charge repossessions were made in 2008, although there is no data specific to second charge repossessions available from the Ministry of Justice. Shelter's advice services continue to see poor practice amongst some second charge lenders,¹ in particular with regard to arrears management, and we believe that good guidance from the OFT could help to improve lender behaviour.

Shelter believes that the parallel regulation of first and second charge mortgages, by the Financial Services Authority (FSA) and OFT respectively, can cause confusion for consumers. Both systems seek to regulate the same sorts of problems in slightly different ways, and both have different strengths and weaknesses. This can mean a lack of clarity and consistency of practice across the mortgage market. We welcome the recent Government commitment to review the regulation of mortgages and consider the merits of bringing second charge lending within the scope of the FSA. However, we believe that a singular, strong regulatory framework should take account of the differences between first and second charge lending and encompass the best consumer protections of both OFT and FSA regulations, particularly the ability to use time orders.

The tone and style of the draft guidance is high level and general and reveals a very different style to the more prescriptive and thorough regulations of, for example, the FSA Mortgage Conduct of Business rules. This may be a reflection of the somewhat limited powers of the OFT licensing regime. However, Shelter believes that the guidance would benefit from being more detailed throughout and we have highlighted specific examples of this in our response. For example, lenders may differ hugely on what they consider to be 'proportionate' action in relation to arrears. How would OFT or indeed advisers seeking to challenge a lender decision, determine proportionality? What are examples of good or bad practice?

Finally, we wish to comment on the purpose and nature of this guidance, and the way in which OFT regulates. The use of guidance to elaborate on specific issues that are not wholly covered under the terms of a Consumer Credit Act (CCA) licence is undoubtedly useful for lenders. But it does mean a fairly piecemeal approach, and as the consultation points out, lenders will have to read this guidance in conjunction with a range of other documents. A single, comprehensive handbook may be easier for lenders, consumers, and advice agencies.

¹ Shelter, Citizen's Advice, Money Advice Trust and AdviceUK are undertaking ongoing research to monitor trends in arrears management practices. The first stage of this monitoring includes an attitudinal survey of advisers and a survey of callers to the National Debt Line. A key finding is that some second charge and sub prime lenders do not appear to have improved their arrears management practices, despite the establishment of the pre-action protocol for mortgage arrears.

General principles of customer care

1. Are the draft guidelines on general principles sufficiently clear?

Yes.

2. Are there any substantive aspects of the draft with which you disagree?

No.

3. Do the draft guidelines on general principles have any significant omissions?

In keeping with the principle of transparency set out in the first bullet, we recommend that the guidance should state that lenders' arrears management policies are made publicly available. This would mean that consumers, advisers and enforcement agencies had easy access to information to enable them to understand exactly how lenders manage repayment difficulties.

We also consider that customer care principles should include guidance on the role of advice agencies, namely that all lenders should be aware of the services advice agencies offer and be able to signpost borrowers to sources of free, impartial, independent advice when appropriate.

Another basic principle of customer care should be that there is adequate capacity and capability amongst front line call centre staff, and that borrowers are able to talk to the right person quickly when they have a problem.

4. Do you have any other suggestions for improvement?

In order to emphasise that lenders should explore all of the options before commencing possession action, we suggest further detail on the fifth bullet as follows:

"... repossession should only be used as a last resort where all other forbearance routes have been exhausted and repossession is in the best interests of the borrower."

Pre-contract issues

5. Are the draft guidelines on pre-contract issues sufficiently clear?

6. Are there any substantive aspects of the draft guidelines on pre-contract issues with which you disagree?

7. Are there any significant omissions?

8. Do you have any other suggestions for improvement to this section?

We have no comments on this section.

Contract issues

9. Are these draft guidelines on contract issues sufficiently clear?

We fully agree with the points that borrowers should be encouraged to read all contract documentation, with the support of an adviser where necessary and that documentation should be absolutely clear in respect of charges and fees.

10. Are there any substantive aspects of the draft guidelines on contract issues with which you disagree?

11. Are there any significant omissions?

12. Do you have any other suggestions for improvement to this section?

We have no further comments on this section.

Post-contractual issues

13. Are the draft guidelines on post-contractual issues sufficiently clear?

14. Are there any substantive aspects of the draft guidelines on post-contractual issues with which you disagree?

15. Are there any significant omissions?

16. Do you have any other suggestions for improvement to this section?

We feel that this section does not sufficiently emphasise the need for lenders to treat customers individually, or take account of any particular needs of customers with serious illnesses, mental health difficulties, or low levels of financial capability. Lenders should ensure that fully trained, dedicated arrears management staff, who are empowered to negotiate with the borrower, are available to answer calls.

We suggest strengthening paragraph 5.2 to say that lenders should not impose penalty charges for late payment or for any other breach of the agreement. It is often difficult to distinguish a default charge, intended to cover the administrative costs of handling arrears, from a penalty charge, which essentially constitutes a 'fine' on late payment. However we consider penalty charges to be totally unreasonable to the consumer, who is likely to be significantly indebted.

Section 5.7 should spell out more clearly the different types of repayment plans that lenders could offer, including:

- extending the term of the loan
- payment holidays or deferrals
- changing payment dates
- changing the type of loan (for example to interest-only)
- capitalising the arrears
- consideration of government-led schemes such as Homeowner Mortgage Support or the Mortgage Rescue Scheme.

Lenders should be willing to consider any repayment plan that a borrower and/ or adviser offers and give clear reasons, in writing and within reasonable time limits, for refusing any plan.

Possession action

17. Are the draft guidelines on possession action issues sufficiently clear?

This section refers lenders to the pre-action protocol, which we believe to be an appropriate and clear summation of the steps lenders should take before taking court action. However there are significant aspects of arrears management and possession claims that are not accounted for in either the guidance or the pre-action protocol, which we have highlighted below.

18. Are there any substantive aspects of the draft guidelines on possession action issues with which you disagree?

No.

19. Are there any significant omissions?

This section would benefit from guidance on post-possession issues. It currently lacks any guidelines on voluntary sale, the court process, management and sale of properties in possession and pursuance of outstanding debt. Where all other avenues have failed and court proceedings are underway, borrowers may be at their most vulnerable and at this stage require fair and sympathetic treatment from their lender. In particular, the following issues are not covered:

- information lenders should provide to borrowers about marketing and sale of the property

- management of shortfall debt and payments of any surplus monies after sale of the property
- guidance on possession action where there may be a tenant living in the property
- communication with any other lenders who have a charge secured against the property.

Some of these issues are covered in other OFT guidance documents, such as the debt collection guidance, but we believe there is merit in covering all aspects of the repossession process in one document.

We would also like the guidance to explicitly state that lenders should not seek to exercise the power of sale in relation to residential property without first obtaining a possession order from the court.²

20. Do you have any other suggestions for improvement to this section?

We have no further comments.

Regulatory compliance and enforcement

21. Are the draft guidelines on regulatory compliance and enforcement sufficiently clear?

22. Are there any substantive aspects of the draft guidelines on regulatory compliance and enforcement with which you disagree?

23. Are there any significant omissions?

We welcome the OFT's principle, outlined in section 7.1, that it expects all lenders to fully comply with the guidance. Yet there is very little detail as to how it will ensure that businesses have embedded the guidance into their policies and procedures. Furthermore, the OFT does not say how it will monitor compliance with the guidance, nor how it will ensure effective responses are made to borrower complaints. We would welcome more clarity on the routes for customer complaints and redress.

24. Do you have any other suggestions for improvement to this section?

We consider that this section reveals some of the limitations of the OFT's regulatory regime, specifically:

² As in the case of *Horsham Properties v Clark and Beech*.

- that fines can only be charged up to £50,000 – which could be a negligible amount for a large lender
- that courts are unable to take guidance such as this into account when ruling on possession cases
- that enforcement tends to be reactive.

Shelter Policy Unit

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