

Shelter's response to the Treasury paper – Regulating the sale and rent back market: a consultation

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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 behaviour. 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

Shelter welcomes the opportunity to comment on this consultation paper and the positive action taken by the Government and the Financial Services Authority (FSA) to regulate the sale and rent back (SRB) market. As we have seen many customers suffering at the hands of unscrupulous SRB operators we very much look forward to the planned implementation of the FSA's interim regime in the summer.

Response to consultation questions

1. Do you agree with the Office of Fair Trading's (OFT) analysis of the SRB market as presented above?

Shelter prepared a detailed submission for the OFT's market study into SRB. This was based on desk research including analysis of over 70 websites, mystery shopping with ten schemes, review of advertisements for SRB schemes featured in the national/local press and case studies. The findings of the OFT are broadly in line with Shelter's research. It should be noted that estimates of the overall number of landlords, upon which the estimate of SRB providers is based, vary considerably. For instance, the Rugg review suggested a figure of 1.2 million landlords for England alone, based on the English House Condition Survey.¹

2. Do you agree that the SRB market does not currently work well for consumers?

Yes. We strongly agree with this. In particular we would also highlight the following.

Eligibility for Housing Benefit

The OFT market study indicated that advice on Housing Benefit given by SRB providers has been a common cause for complaint with some customers only discovering they would not be eligible for Housing Benefit once they had gone through with the sale. In particular, some sellers are proceeding with SRB on the basis that they will be able to claim Housing Benefit to help pay the rent once they become tenants and then are affected by the rules relating to capital or rules relating to being an ex-owner. One of the key recommendations of the OFT report was that the Department for Work and Pensions (DWP) should provide greater clarity on the eligibility of SRB tenants for Housing Benefit. We are pleased that the DWP has now provided more detailed guidance on this for Housing Benefit officers and a leaflet for consumers. However, it is essential that an effective mechanism is introduced to ensure that advice on Housing Benefit for SRB reaches all those who are considering selling their homes in this way.

Advertisements and promotional activity

The way in which schemes are advertised and promoted is frequently misleading. In particular, the majority of schemes in our research gave the impression it was possible to stay in your home for as long as needed whilst in reality this isn't true.

¹ Rugg J and Rhodes D, The private rented sector: it's contribution and potential, Centre for Housing Policy, University of York, 2008

Lack of independent valuations

In some of the schemes reviewed in our research companies would conduct their own valuation rather than commission an independent valuation. In addition, sellers very rarely had access to valuation reports. An independent valuation is a key control against the risk of exploitation. We believe that an independent valuation of the property should take place for all SRB transactions and that sellers should have full access to these.

Lack of information on risks and advice

We agree that customers may be unaware of or unable to properly assess the other options available to them. Many turn to SRB when vulnerable and panicked about the threat of repossession but then end up losing out financially because of the need to make a quick decision. Our research suggests that information provided by SRB operators on other options is at best extremely limited. In no cases in our research did schemes give unprompted information or advice about other possible options or risks.

Landlord repossessions

We have seen many cases where the new SRB landlord has defaulted on the mortgage payment and the household has subsequently lost their home. This reflects a significant increase in buy to let mortgage arrears and repossessions across the board.² Shelter and others are calling for increased protection for tenants in this situation.³

Loss of equity

Our research shows that some schemes offer as little as 60% of the property's value and many do not make it explicit in their promotional material that the prices offered are below market value. Further, from our client experience it is clear that any written paperwork can be provided at a very late stage in the process making scrutiny of this difficult. As a result many can suffer significant financial loss as a result of undertaking SRB transactions but may not have fully understood the implications of their transaction at the time.

Implications for homelessness safety net and bankruptcy proceedings

There are potential implications for homelessness safety nets should any rental agreement break down. Previous sellers could be considered intentionally homeless by the local authority following the end of an assured shorthold tenancy if the authority considers the owned home to be the last settled accommodation. SRB transactions can also impact negatively on any application for bankruptcy.

² In the second half of 2008, the number of buy-to-let properties being repossessed was double that of the same period in 2007 (1,100 to 2,300). At the end of December 2008 there were 26,800 buy-to-let mortgages in arrears which is an increase of more than 100 per cent from the same period in the previous year (12,100). See CML (2009) Table AP5

³ A private matter? Private tenants: the forgotten victims of the repossessions crisis, March 2009, Shelter/Citizens Advice/CIH/Crisis

3. Do you agree with the estimated costs and benefits of the three options, as presented in the Impact Assessment in Annex A?

We are not aware of any other costs or benefits of the three options.

4. Do you agree with the OFT that the existing regulatory framework is unlikely to provide appropriate consumer protection in the SRB market?

Yes. See Question 2.

5. Do you agree with the OFT that self-regulation is unlikely to provide appropriate consumer protection in the SRB market?

Yes. We are aware that a voluntary code of practice is being developed by the National Landlord's Association and we welcome this move to raise standards and to identify and discourage malpractice. However, Shelter believes that the worst SRB providers are unlikely to sign up to a voluntary code. As such, we do not believe it is enough for private schemes to self regulate through voluntary codes and we do not believe this provides enough protection for the consumer. However, the draft codes that have been developed may provide a useful indication of areas to consider in terms of developing regulation.

6. Do you agree with the OFT that FSA regulation would provide the appropriate consumer protections in the SRB market?

Yes. Alongside the Council of Mortgage Lenders, Citizen's Advice and others we have actively called for this as the most appropriate solution. However, FSA regulation will only provide an appropriate level of consumer protection if it is carried out effectively. We have made a number of recommendations for implementation of the proposed interim and full regime in this consultation response and our response to the FSA consultation on the interim regime.

7. Does the proposed definition of a regulated SRB agreement capture existing and potential SRB models?

We believe that the proposed definition of a regulated SRB agreement will capture existing and potential SRB models. However, there may be some scope for confusion given that the only factor which distinguishes home reversion plans from SRB providers is the addition of qualifying termination events. These events include when the person becomes a resident of a care home or the person dies. However, tenancy agreements may also include reference to such events albeit within a very different context. This raises a minor concern that some SRB agreements could inadvertently fall within the definition of a home reversion plan if the definition is not tight enough. We would encourage action which could be taken to resolve any ambiguity. For instance, worked examples could be given in guidance to the legislation on alternative situations to ensure the meanings are clear.

8. Does the proposed definition of a regulated SRB agreement exclude arrangements which are not SRB agreements, including but not limited to equity release products?

The definition, coupled with the condition that arrangements which are 'not by way of business' are not captured, should ensure that most transactions which would not normally be considered part of the SRB market are excluded from the scope of regulation.

9. Do you agree with the Government's proposed approach to the situation where there is a gap between the sale and taking up of occupancy?

Yes. This appears a sensible approach.

10. Do you agree with the Government's approach to intermediaries in relation to SRB agreements?

Yes. We strongly agree that intermediaries (ie brokers for small SRB companies or individuals) must be regulated alongside other SRB providers given many of the activities undertaken will be the same as for schemes which also own the property and manage the rental. Although we have no information as to size of the intermediary market we have seen firms which are acting on behalf of networks of private investors. As such we believe that intermediaries could potentially be a significant part of the market. The OFT have also highlighted intermediaries as one of the key SRB business models.

11. Do you agree with the Government's approach to the regulation of third parties?

Yes. We are broadly supportive of the Government's approach with regard to third parties. In particular, ensuring that third party providers are regulated will provide reassurances to SRB tenants over the standing of their new SRB providers. Tenants risk losing their home through no fault of their own if their provider defaults on the mortgage. Regulation allows introduction of a number of controls to ensure financial viability and operational standards.

12. Do you agree with the Government's approach to administering activities relating to SRB activities?

Yes. We are not aware of a significant level of SRB activity which would fall under this provision. However, we believe this is a prudent approach given that the industry is still evolving and new business models may emerge over time.

13. Do you agree with the Government's proposed approach to activities to be excluded from the regulatory regime for SRB agreements?

Yes.

14. Do you agree with the Government and the FSA's proposed approach to an interim regime for SRB agreements?

We are supportive of the general approach and are particularly welcome the FSA's proposal for a two stage process by introducing an interim regime. This will help ensure that tenants are given much needed protection at the earliest opportunity and we are ready to work in any way needed to help ensure implementation in July 2009. However, we have highlighted a number of areas where we believe the interim regulatory regime could be strengthened in our FSA consultation response.

15. Do you agree with the proposed restrictions to those who may receive interim permission in relation to SRB agreements?

We have no concerns over the proposed approach.

Other comments

We are strongly supportive of the action the Government is taking to protect consumers in this market. However, in order for regulation of SRB to be successful we believe there will be a need for pro-active enforcement of the regulations. As the OFT market study highlighted there are concerns about rogue operators from both advice agencies and SRB firms. There is a significant risk that operators will choose to avoid registering with FSA and carry on operating regardless of regulatory requirements. This would leave tenants exposed to the very worst operators in the market. In order to guard against such an outcome, the FSA should take pro-active enforcement measures, for instance following up local advertisements and leaflets to ensure that all SRB operators are registered. We also believe that consideration should be given to providing greater security of tenure for SRB tenants as part of the full regulatory regime.

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