

Shelter's response to the CLG consultation on clarifying the Right to Buy rules

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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 housing aid centres
- Shelter's free housing advice helpline which runs from 8am-midnight
- Shelter's website which provides housing 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 'Homeless to Home' schemes, which work with formerly homeless families, and Shelter's Inclusion Project, which works with families, couples and single people who have had difficulty complying with their tenancy agreements because of alleged anti-social behaviour. The aim of these particular projects is to sustain tenancies and ensure people live successfully in the community.

Introduction

This consultation proposes, amongst other amendments, to change the way in which mortgage lenders are approved for Right to Buy business. Shelter believes this change may cause hardship in operation. Our response is focused on the specific issues raised by this proposal, and other questions are omitted or covered only briefly.

Shelter continues to hold a number of concerns about the Right to Buy. The Housing Act 2004 introduced some welcome reforms to the Right to Buy, extending the Qualifying and Discount Repayment periods (during which a proportion of the discount must be repaid if the property is sold on). These have helped limit the exploitation of the Right to Buy by property companies. However, we believe that further consideration of the Right to Buy is still justified and needs to go further than the minor amendments proposed under this consultation paper.

We have urged the Government to consider Social Homebuy as a successor to the Right to Buy since the introduction of the Homebuy package in 2005. We consider that Social Homebuy offers a much more sustainable way of helping tenants in social rented housing

to move into home ownership. This product is not without its shortcomings, and we believe there is room for further improvement, as to date it has clearly not proved popular, either with landlords or tenants. However, Shelter believes that it is preferable to the Right to Buy. We believe that there is now no need to continue to offer the Right to Buy or the Right to Acquire. This will particularly become the case if, as hinted in the recent Housing Green Paper, Social Homebuy is to become a product available to all tenants of social rented housing¹. The Right to Buy is potentially financially damaging to tenants who take it up when they cannot fully afford the costs of the purchase, or future repairing liability for the property. There is no affordability test before purchase with the Right to Buy, unlike for Social Homebuy². The Right to Buy has long generated complaints within the sector of unfairness due to the limited nature of who is eligible to exercise it. In particular, tenants of local authorities generally have the Right to Buy whereas tenants of RSLs generally do not. Finally, the Right to Buy has had an extremely damaging effect on the availability of social rented housing to those who need it. In England more than 1.7 million properties have been sold under the Right to Buy since its introduction in 1980, yet less than half of these have been replaced through social house building³. Social Homebuy, on the other hand, does go a long way towards requiring receipts from sales to be used to build replacement units⁴.

Shelter believes that the Right to Buy is a policy which should no longer be in operation when an alternative home ownership offer exists in Social Homebuy. We take this opportunity to ask, again, that the Government consider withdrawing it and replacing it with an expanded and more widely available Social Homebuy. We hope that the Scottish Executive's recent proposal to end the Right to Buy for newly built social housing in Scotland⁵, in order to safeguard the supply of social housing, will be an encouragement to this end.

If the Right to Buy is to remain in place as a home ownership offer, then we strongly urge the Government to look again at the discount regime. In May 2003, the maximum Right to Buy discount available to council tenants in 41 local authorities in London and the South

¹ *Homes for the future: more affordable, more sustainable*, DCLG, 2007, Chapter 9

² *Capital Funding Guide 2007*, Housing Corporation, 2007. This guide requires RSLs operating Social Homebuy to assess the sustainability of the purchase by carrying out affordability checks on the tenant's available savings and income.

³ *DCLG Housing statistics Live Tables*. Also see House of Commons Official Report, 15 May 2006: Column 818W - In a response to a recent parliamentary question tabled by Austin Mitchell, MP for Great Grimsby, Housing Minister Yvette Cooper revealed the Government had received more than £5.5 billion in Right to Buy receipts between 2003/04 and 2004/05.⁵⁴ By comparison, the Government invested only £3.3 billion via the Housing Corporation in its last round of grants in 2004–06 and the Corporation's 2006–08 programme is for £3.9 billion.

⁴ *Capital Funding Guide*, Housing Corporation, 2007

⁵ *Firm foundations – the future of housing in Scotland: a discussion document*, the Scottish Government, 2007

East was reduced to £16,000. This has ensured a much greater capital receipt from each property sold. Shelter believes that other areas would benefit from a similar approach. As a first step, we suggest that the Government updates the 'Affordability Index' developed in 2003 to identify which authorities should be subject to the reduced £16,000 discount.

We also suggest that an affordability and sustainability check should be introduced as a compulsory stage in the purchase process for Right to Buy, just as it is in Social Homebuy. The local authority, as landlord and vendor, should have a duty to assess the tenant's financial position and any mortgage offer which they have received, to make sure that the purchase will be affordable in the long term, taking into account all costs of home ownership including repairs and refurbishment. The Government has recognised the necessity of this level of protection for social housing tenants moving into home ownership, through introducing the check as part of the procedure under Social Homebuy. Given that this is the case, Shelter suggests that such a check should be introduced for those taking up the Right to Buy. It should replace the current requirement⁶, which is simply for landlords to give tenants general information about the costs of home ownership.

Responses to consultation questions

1. Do you agree that tenants who are subject to 'postponed' possession orders– ie orders which do not initially specify a date for possession – should not be able to exercise the right to buy?

Yes, we agree. Shelter has frequently cautioned about the need to ensure that households are not encouraged to enter home ownership if their financial position indicates that they will not be able to sustain the costs involved in the long term. For this reason, we are keen to ensure that tenants who are having difficulty paying a social housing rent, such that their tenancies are subject to possession proceedings, should not be allowed to exercise the Right to Buy. We welcome this move to bring Postponed Possession Orders into line with the restrictions on Right to Buy which currently operate for tenants subject to Suspended Possession Orders.

2. Do you agree that approval of lenders for Right to Buy purposes should transfer to the Financial Services Authority (FSA)?

⁶ The Housing Act 2004 introduced a requirement for landlords to give all their tenants who are eligible for Right to Buy information about the costs and responsibilities of home ownership.

Yes, this seems a sensible rationalisation which will bring lenders offering products to Right to Buy purchasers into a consistent regulatory environment with those offering general mortgages.

3. If yes:

i. do you agree that lenders who are authorised to carry on business regulated by the Financial Services Authority should automatically be approved lenders for Right to Buy purposes as defined by section 156 of the Housing Act 1985? or
ii. do you think that FSA-authorised lenders should have to apply for a separate approval under section 156? If so, why?

As stated above, we do agree that lenders offering products to Right to Buy purchasers should be regulated by the FSA, for efficiency and consistency. However, Shelter believes strongly that, because of the nature of the Right to Buy as a route into home ownership, and the vulnerability of many of the tenants who have the Right to Buy under their social housing tenancy, a higher level of regulatory scrutiny is required for lenders operating in this field.

This consultation paper is published in a climate of rapidly rising repossessions⁷, and worries about irresponsible mortgage lending in the sub-prime sector⁸. Shelter sees every day the consequences on individuals and families when the systems which are supposed to protect consumers are inadequate to the task.

Although evidence to date is limited⁹, it suggests that households who take up a low cost home ownership product may have a repossession rate up to 3 times higher than the general population. Former tenants of social housing who have exercised the Right to Buy may be a particularly vulnerable group, because there is no provision for the landlord to carry out an assessment with the tenants of whether or not the purchase will be sustainable in the long term. This may lead to some households proceeding with a purchase when they cannot truly afford the costs of home ownership. Despite current FSA regulation, at present it seems we cannot rely on the mortgage industry itself to

⁷ Since 2004 there have been rapid increases in numbers of repossessions. CML figures show that there were around 8,000 repossessions in 2004. In 2006 there were more than 22,000, a three-fold increase over two years.

⁸ See Whitehead, C: *At any cost? Access to housing in a changing financial marketplace*, Shelter, 2007

⁹ The Department for Communities and Local Government, in a review of evidence for publication as part of the outputs of the Shared Equity Task Force in 2006, were only able to find one piece of research from 2002 which addressed this issue. This research (*Bramley, G et al: Evaluation of the low cost home ownership programme*, ODPM, 2002) found that amongst LCHO purchasers, the rate of repossession was 0.77%, over three times as high as that for all borrowers (0.21%), and nearly twice as high as the rate for all first time buyers (0.44%).

provide this check on affordability. There are frequently reports of lenders and brokers in the sub-prime sector making doorstep approaches to social housing tenants to encourage them to exercise their Right to Buy, selling them financial products and mortgages which bear no relation to their ability to pay¹⁰.

Shelter has raised concerns elsewhere (see our response to the recent Housing Green Paper on our website) that the existing system of FSA regulation is not proving effective at protecting mortgage borrowers. Mortgage lending has only been regulated by the Financial Services Authority since 2004, and the system of regulation and scrutiny which they have put in place is still unproven in its effectiveness¹¹.

All firms subject to FSA regulation are required to conform to a code of business known as the Mortgage Conduct of Business (MCOB). They are also subject to a customer service protocol called "Treating Customers Fairly" (TCF), which demands basic standards of integrity and product explanation. This protocol, together with the MCOB, should offer some degree of protection to consumers. However there are question marks over whether this system of regulation is adequate in itself, and over whether it is followed in practice.

Shelter has particular concerns over the degree of effectiveness of the regulatory regime within the sub-prime sector. The FSA recently published the outcome of Stage 2 of their Mortgage Effectiveness Review. This Review, part of their system of regulation and oversight of mortgage business, had been planned to take place in stages when they took on regulation of the sector in 2004. Stage 1 looked at lending practices in the prime, mainstream sector and reported in 2006, identifying no major problems. Stage 2 was intended to look at advertising and lending practices in the sub-prime sector¹², and to consider conduct of business across the entire sector over the lifetime of the mortgage, including how firms operate when customers fall into arrears. The output published in 2007 for Stage 2 covered only their investigation into lending practices in the sub-prime sector, and did not include any material about lifetime conduct of business or arrears management, whether in the prime, or sub-prime sectors; this element of the Review is ongoing, and due to publish in 2008.

¹⁰ For example see "Cold callers 'break rules to lure right-to-buy tenants'" – report by Jill Insley, Observer 22nd April 2007, which quoted the Chief Executive of a Housing Association in the Midlands as saying that to his knowledge at least 4 different firms had been cold-calling tenants on the Association's estates giving misleading information about the costs and implications of exercising the Right to Buy.

¹¹ FSA has been keeping the system under review since they took over regulation in 2004. Previous stages of the review have focused on pre-sale issues, and they are now turning their attention to post-sale issues including how arrears are dealt with.

¹² Mortgage Effectiveness Review – Stage one report, FSA, 2006

The Stage 2 Review found worryingly low levels of good practice with regard to checking affordability and suitability of specific products for customers in the sales and advertising side of the sub-prime sector.¹³ In one third of cases investigated, inadequate assessment of affordability had been made. In half the cases surveyed, assessment of the suitability of the product to the customer's needs had not been carried out. None of the lenders surveyed had covered all responsible lending considerations in their policies. Intermediaries (ie brokers) were found to be a particular risk when it came to selling products which were unaffordable or otherwise unsuitable to the customer's needs. The Government has expressed concern at these findings in the recent Housing Green Paper, particularly highlighting the question of "whether the financial incentives for mortgage brokers operate against the long-term interests of those they are advising"¹⁴. However, the action resulting from these disturbing findings has been disappointing. Whilst the FSA took action against only 5 providers, it is clear that the levels of poor practice go well beyond this. The Government has stated that it will wait until the results of a second FSA investigation into practices in 2008 before taking any action. Shelter is concerned at this delay, and believes that enough evidence has already emerged from the initial findings to prompt the Government to investigate now.

Shelter's concern about the adequacy of existing FSA regulation to protect any mortgage consumer is magnified when considering the particular circumstances of purchasers under the Right to Buy. These prospective purchasers may be vulnerable in a number of different ways, whether through age, mental or physical ill-health, poor financial capability or awareness. They may be subject to pressure from family members or others who are looking to realise the potential capital gains from discounted purchase of the home. In exchanging the security and affordability of a lifetime tenancy in social rented housing at a subsidised rent, for the risks and costs of home ownership, they are making a difficult decision. As mentioned above, there is no affordability check in place which might allow their landlord to sit down with them and go through the costs of ownership and their financial situation, ensuring that the purchase will be sustainable in the long term. Shelter believes that given the above, the basic existing system of FSA regulation is not sufficient to protect the interests of this group of prospective purchasers.

For this reason we believe that FSA-authorised lenders should have to apply for a separate approval under section 156 (option ii in question 3 above). The ability to carry out a specific check on lenders wishing to lend to Right to Buy purchasers is, we believe, a valuable extra safeguard. As stated in the consultation paper, the requirements which

¹³ *FSA thematic review July 2007*, published only on the FSA website.

¹⁴ *Homes for the future: more affordable, more sustainable*, DCLG, 2007, p90

currently exist under s156 of the 1985 Housing Act do not actually prevent lenders from lending to Right to Buy purchasers, but they do make it less financially attractive and risk-free for them to do so. We would urge that this safeguard is not taken away at this point in time; unless and until we can be satisfied that the mainstream system of scrutiny and regulation of mortgage lending by the FSA is adequately protecting consumers, an extra safeguard needs to remain in place.

Conclusion

Shelter continues to believe that the Right to Buy has outlived its time as a means of helping tenants in social rented housing move into home ownership. We believe that it should now be replaced by Social Homebuy. If it is to be retained, then the Right to Buy needs further reform, particularly to the discount regime and the checks on sustainability before purchase. The minor procedural changes put forward in this consultation paper are no substitute for the fundamental review of the effectiveness of the Right to Buy as a policy which Shelter believes should be carried out.

In terms of the proposals contained in this consultation, we have focused our response on questions 2 and 3 which address the issue of how lenders under the Right to Buy are approved.

We will be glad to discuss any of the contents of this response further, if that would be helpful.

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