

# Shelter's response to the FSA consultation paper - Regulating sale and rent back: an interim regime

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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 sale and rent back operators we very much look forward to the planned implementation of the FSA's interim regime in the summer.

## Response to consultation questions

### 1. Are there any other forms of SRB (existing or planned) not captured here?

This adequately captures most forms of private SRB scheme. However, we would point out that some schemes offer much less than the typical 70-80% of property value. Our research showed that some schemes offer as little as 60% of the property value<sup>1</sup>.

Clearly, there is also some public sector and not for profit SRB activity. For instance, a small number of housing associations have operated SRB schemes for some time<sup>2</sup>. These offer assured tenancies that provide more security for sellers. The Department for Communities and Local Government (CLG) mortgage rescue package announced in September 2008 will provide a welcome increase in the capacity of such provision.

### 2. Are there any other business models in the SRB market?

Paragraphs 2.5 -2.9 of the consultation paper covers the types of business models which we have seen operating in the market. However, we would like to make two comments here. First, we would question whether the involvement of intermediaries is limited. 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. Second, in terms of the impact of the current market 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<sup>3</sup>. Shelter and others are calling for increased protection for tenants in this situation<sup>4</sup>.

### 3. Do you agree with our proposal to create a bespoke regulatory regime for SRB?

Yes. Given the high level of well documented consumer detriment it is clear that continuing with the current status quo is not an option. We agree that increasing consumer awareness is part of the solution but we believe this can only be introduced effectively by introducing requirements on SRB schemes to provide more information on alternative options and risks as part of a regulatory regime (See Question 20). 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

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<sup>1</sup> Shelter scoping paper: Commercial Sale and rent back schemes, July 2008

<sup>2</sup> Shelter, Good practice: briefing, Mortgage to rent, October 2007

<sup>3</sup> 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

<sup>4</sup> A private matter? Private tenants: the forgotten victims of the repossessions crisis, March 2009, Shelter/Citizens Advice/CIH/Crisis

SRB providers are unlikely to sign up to a voluntary code. As such, we don't 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. We therefore believe that a bespoke regulatory regime for SRB is the only viable option.

4. Do you agree that the risks of the proposed interim regulatory approach are outweighed by the benefits of putting in place consumer protections as quickly as possible?

Yes. We believe it is imperative that the consumer protection is put in place as soon as possible given the high level of consumer detriment associated with this market. We believe that the proposal for an interim regime strikes a good balance by ensuring a reasonable level of protection in the shorter term. However, we believe some action could be taken to increase the robustness of the interim regime as set out in this consultation response.

5. Do you have any comments on the proposed interim permissions regime?

The approach outlined to the interim permissions regime appears reasonable. We note that one type of information that is likely to be required to support an application is details on how new customers are obtained. One of Shelter's main concerns about this market is the way in which consumers are targeted by misleading advertising and promotional material. We believe it would be extremely beneficial if the FSA could review the basic advertising and promotional material used by firms as part of the interim permissions regime so that obvious offenders in this respect can be refused interim permission.

6. Do you have any comments on the proposed interim Variation of Permission regime?

This appears to be a reasonable approach.

7. Do you have any comments on the proposed status disclosure requirements?

We agree this is a sensible approach. It is clearly important that consumers do not receive misleading signals about the extent to which a SRB firm has been approved for business and we welcome the fact the FSA is taking action to prevent this.

8. Do you have any comments on the proposed reporting requirements?

The consultation states that the FSA will not be requiring firms to report details of complaints as part of the reporting process. However, we believe that such details would provide valuable information about the risks to consumers to inform the supervision of regulated firms. We would recommend that at least some basic information about complaint types and levels is included as part of reporting requirements and that checks on complaints records are carried out where concerns exist.

9. Do you have any comments on our proposed approach to supervision of SRB firms?

We welcome the proposed approach to supervision of SRB firms. However, in addition to such supervision we believe action will be needed by the FSA to enforce the requirement for SRB schemes to register. As the Office of Fair Trading (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.

10. Do you agree with our proposal to apply the Principles for Businesses to SRB?

Yes.

11. Do you agree with our proposal to apply part of SYSC 4, as well as SYSC 5 and SYSC 9?

Yes. These appear sensible areas of the STSC sourcebook to focus on for the interim regime.

12. Do you agree with our proposals to apply the Training and Competence sourcebook to:

- a) advising on SRB agreements; and
- b) overseeing non-advised sales of such agreements on a day-to-day basis

but without imposing the appropriate examination requirements?

Yes. We believe that training and competence requirements would be beneficial. In particular, we believe that advice from SRB staff on Housing Benefit has often been very misleading with some households going through with SRB in the belief they will be entitled. In reality, many households are affected by rules regarding capital and on being an ex owner occupier and are not entitled to Housing Benefit<sup>5</sup>. In addition, other areas where information given has been inadequate include the alternative options for tackling mortgage debt and the risks associated with assured shorthold tenancies. Shelter runs a range of training courses which cover these areas.

If SRB firms are advising on these issues we believe the advice should be subject to a system of regulation and redress so that consumers are protected from mis-selling. We also believe that all firms should be required to signpost all SRB customers to sources of independent advice as recommended by the OFT.

13. Do you agree with our proposals to apply only the high-level competence requirements to all other activities carried on by SRB firms?

Yes

14. Do you agree with our proposal to apply the MCOB guidance on high-pressure sales?

Yes. We strongly agree that high pressure sales tactics can often be used by SRB firms as the OFT's market study also found. As such we strongly support applying MCOB guidance on high-pressure sales. However, clearly for this to be effective pro-active enforcement action by the FSA will be needed to identify offenders – perhaps through mystery shopping. We also believe that a cooling off period would be beneficial. However, such an approach would need to be carefully thought through to ensure it benefited the consumer. For instance, this would need

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<sup>5</sup> Some sellers are proceeding 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 rules relating to capital or rules regarding being an ex-owner. If a Housing Benefit claimant has more than £6,000 (£10,000 for pensioners as from November 2009) in capital then this will be taken into account in the calculation. For those with more than £16,000 the claimant is not entitled to Housing Benefit or Council Tax Benefit. This could affect those who have equity left over after the sale but are on low incomes. In addition, the rules state that a claimant is not eligible for Housing Benefit if he or she, (or a partner) previously owned the dwelling and owned it within the last five years, unless the claimant can satisfy the authority that they could not have continued to live in the dwelling without letting go of ownership. While some sellers may be able to demonstrate this others may find it more difficult depending on their individual circumstances. For more information see para 2.61 of Zebedee J et al, Guide to Housing Benefit and Council Tax Benefit 2008-09, Shelter

to provide enough time for the consumer to seek advice without hindering the process for others.

15. Do you agree with our proposal to apply rules requiring firms to protect consumers' interests?

Yes. 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 schemes on other options is at best extremely limited. In no cases in our mystery shopping research did firms provide unprompted information or advice about other possible options to deal with mortgage debt. However, we would go further than this and recommend that SRB schemes are required to signpost all potential consumers considering SRB to existing sources of free independent advice as recommended by the OFT. In addition, we believe all customers should be provided with standard written information when they first seek the advice of SRB schemes (See Question 20). We believe the first two requirements should need to be fulfilled when customers first contact SRB schemes and evidence that this information has been provided should be retained by SRB firms. Again pro-active enforcement of the rules by the FSA would be needed to ensure this was effective.

16. Do you agree with our proposal to apply a rule requiring independent valuation?

Yes. We strongly agree with this requirement. 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. 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 risks of exploitation.

17. Do you agree with our proposal to apply a rule on beneficial interest to safeguard consumers?

Yes. We agree that this part of the Mortgage Conduct of Business (MCOB) guidance should be applied and that consideration should be given to how this could be proactively enforced.

18. Do you agree with our proposal to apply rules relating to financial promotions and communications?

Yes. We strongly agree that action to protect consumers in this regard is very much needed. The way in which schemes are advertised is frequently misleading. In particular, the majority of schemes in our survey gave the impression that it is possible to stay in your home for as long as needed whilst in reality customers are typically provided with an assured shorthold tenancy providing security of tenure for between six to twelve months. We recognise that action to tackle this can be taken under the existing general consumer protection regulation. However, we believe that there is a need for strong action to ensure that misleading advertisements are identified and regulatory action follows on from this. In addition, we have found that many schemes do not make it explicit in their promotional material that the prices offered are below market value. We believe there should be a requirement to make the level of discount very clear in promotional and other material and that the FSA should strongly enforce this.

19. Do you agree with our proposal to apply a rule on excessive charges?

Yes. We believe that consumer protection with regard to excessive and unreasonable charges is needed. The OFT market study found instances of SRB firms levying unexpected charges at a late stage and that fees and charges were not adequately disclosed in some cases. We believe that charges such as administration or legal fees should therefore be included in the proposed pre-sales disclosure (See question 20).

20. Do you agree with our proposal to apply a bespoke conduct of business rule on pre-sale disclosure for the interim regulatory regime?

Yes. We strongly agree that many consumers are not in a position to fully assess the risks and costs associated with SRB transactions. We recommended a written statement of this kind in our OFT market study submission and we were pleased to see the OFT also highlighted this. In addition to the areas for disclosure proposed in the consultation paper we believe the following would also be appropriate:

- Clear disclosure of the level of discount alongside the market value of the property and the price to be paid by the SRB firm
- Some basic details about the type of tenure offered and any risks to security of tenure such as landlord repossessions
- Details of any fees or charges payable (eg legal/administration)
- Clarity as to whether the SRB will appoint a solicitor or if a seller must appoint one independently and who will cover the costs
- Identity of landlord

In addition to the pre sale disclosure we believe an additional requirement should be to ensure that standard information is provided to all consumers when they first approach SRB schemes. We welcome the existing sources of information such as the joint National Homelessness Advice Service/CLG leaflet on mortgage debt, the newly drafted Department for Work and Pensions leaflet on housing benefit for SRB tenants and the FSA money made clear leaflets. However, we remain concerned that the right information is not getting to potential SRB tenants. There are a number of areas where we believe accessible information is very much needed:

- Many sellers may have been given the impression from promotional material that they could remain in their homes as long as they like but then are shocked by how easily they can lose their homes. For instance, a landlord may choose to sell the property or the landlord could default on the mortgage repayments and the lender seek possession. We believe clear and accessible information about security of tenure should be provided at an early stage.
- Some sellers are proceeding on the basis they will be able to claim Housing Benefit to help pay the rent once they become tenants and then are affected by rules relating to capital or rules regarding being an ex-owner. Clear information which points out these rules to those considering SRB transactions would be very beneficial.
- There are a number of other options that potential sellers could consider as an alternative way of dealing with mortgage arrears problems. Shelter advises that negotiating reduced payments with lenders is usually a better option and could cost less in the long run. Possible options include (i) paying only interest or a reduced capital payment for a period of time (ii) extending the mortgage term (iii) adding the



arrears to your mortgage (iv) selling the property on the open market and moving into the private rented sector (v) Government mortgage rescue scheme (vi) Homeowner Mortgage Support Scheme (vii) ISMI

- SRB transactions can impact negatively on any application for bankruptcy. There are also 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 they consider the owned home to be the last settled accommodation.
- Potential sources of free and independent advice, such as Shelter and Citizens advice

We believe that action should be taken so that all the right information gets to potential SRB tenants. This could be done through a requirement on SRB schemes to provide such information directly and possibly through the drafting of a single leaflet covering all the issues related to SRB. Clear and accessible written information on all these areas might help to address overall customer awareness of the risks and costs associated with SRB transactions as well as the alternative options available to them.

21. Do you agree with our proposal to apply most of our DISP rules to SRB firms?

Yes, although see our comment with regard to complaints in Question 8.

22. Do you agree with our proposal to bring SRB firms into the compulsory jurisdiction of the FOS?

Yes. We believe access to an independent system of redress is an essential element of the new regulatory regime.

23. Do you agree with our proposal to not bring SRB firms with an interim permission into the scope of the FSCS?

We understand the reasons for not including SRB schemes with an interim permission into the scope of the FSCS. However, we would like consideration to be given to an alternative system for compensation for SRB customers during the interim regime. We would recommend that SRB schemes are brought into the scope of the FSCS for the full regulatory regime.

24. Do you agree with our proposal that, for firms which have an interim VoP for SRB, the scope of the FSCS should apply only for advisers and arrangers, and not for providers and administrators?

Yes

25. Do you agree with our proposed interim application fee for sale and rent back?

26. Do you agree with our proposed application of periodic fees?

27. Do you agree with our proposed application of FOS fees?

28. Do you agree with our proposed application of FSCS fees

We have no concerns about the proposed system for fees.



29. Will the proposed interim regulatory regime generate any further costs that have not been identified here?

We are not aware of any.

30. Will the proposed interim regulatory regime framework generate any further benefits that have not been identified here?

We are not aware of any.

31. Do you have any other comments on our CBA?

No

32. Do you agree with the compatibility statement?

Yes

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