Consultation response

Shelter response to the HM Treasury consultation: A new approach to financial regulation: the blueprint for reform

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About Shelter

Shelter is a national campaigning charity that provides practical advice, support and innovative services to over 170,000 homeless or badly housed people a 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 40 advice services
- Shelter's free housing advice helpline which runs from 8am–8pm
- Shelter's website (shelter.org.uk/getadvice) 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, who are approached by people seeking housing advice
- A number of specialist services promoting innovative solutions to particular homelessness and housing problems. These include Housing Support Services which work with formerly homeless families; the Shelter Inclusion Project, which works with families, couples and single people who are alleged to have been involved in antisocial behaviour; and, prison services providing housing advice and support to offenders which enable them to acquire and maintain suitable accommodation on release, which reduces re-offending. The aim of these services is to sustain tenancies and ensure people live successfully in the community.

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.

A new approach to financial regulation: the blueprint for reform

Shelter welcomes the opportunity to respond to the Treasury's consultation: A new approach to financial regulation: the blueprint for reform. We broadly welcome the government's proposals to improve financial regulation, which is of interest to Shelter because we know that poor financial regulation allowed risky mortgage lending and unfair treatment of mortgage borrowers by some lenders. This had negative consequences for individual borrowers, the housing market and the wider economy. As such, Shelter broadly welcomes the consumer protection proposals set out by the Treasury, which we believe could help to prevent the scale and the severity of the irresponsible practices we witnessed in the build up to the financial crisis.

Reckless mortgage lending saw many thousands of households lent mortgages that they had no hope of ever paying back, placing borrowers in dire financial straits. The practice of securitisation, where mortgage books were sometimes sold on to unregulated third parties who had no obligation to treat struggling borrowers fairly, led to macro-economic instability and also direct consumer detriment. We have also seen a sustained period of arrears and repossessions, partly dampened by low interest rates and increased regulatory scrutiny:

- Over 150,000 households have had their homes repossessed since 2007.[1]
- Meanwhile, new research by the Consumer Credit Counselling Service finds that 11% of all mortgage accounts are in some kind of financial distress.[2]
- Shelter commissioned YouGov polling found that 18% of homeowners are 'constantly struggling', an increase of 78% in the last year.[3]

Shelter is not directly concerned with the full range of financial services regulation; our interest lies in whether the proposed regulatory tools will prevent the conduct and prudential practice of lenders that causes direct detriment to borrowers and wider negative effects on the housing market. As such, our response to this consultation will focus on questions relating more directly to mortgage lending and consumer protector for borrowers.

Responses to individual questions

6) Do you have any views on the FCA's objectives – including its competition remit - as set out in paragraphs 2.80 to 2.90 and in Chapters 3 and 4?

Shelter believes that a sustainable financial system is one that starts with the best interests of consumers and the wider economy, and we are pleased that the Treasury has highlighted consumer protection as a key principle for the new regulatory framework. Consumer Focus research highlights that the overall culture of a regulator is central to the effectiveness of regulation.[4] We believe this should start with strong principles set out in legislation.

Shelter does not consider the wording of the consumer protection objectives as it stands to deliver on Ministers' ambitious vision. We believe a stronger objective, similar to Ofcom's consumer protection objective,[5] would send out a stronger message to the regulator about the necessary culture shift, and allow consumers and consumer groups to hold them to account against this objective, particularly around protection for vulnerable consumers.

[1] Council of Mortgage Lenders, Quarterly repossession statistics
[2] Consumer Credit Counselling Service, Debt and household incomes report, 2011.
[3] Figures are from YouGov Plc. Total sample size was 2234 adults. Fieldwork was undertaken between 10-12 August 2010. The survey was carried out online. The figures have been weighted and are representative of all GB adults (aged 18+).

[4] Fair enough? A report to Consumer Focus from the National Consumer Federation on the FSA's Treating Customers Fairly initiative. 2011.
[5] Section 3(4) of the Communications Act 2003

7) Do you have any views on the proactive regulatory approach of the FCA, detailed in paragraphs 2.91 to 2.110 and in Chapters 3 and 4?

Shelter welcomes the new powers proposed by the Treasury. In particular we support the powers to ban detrimental products and to publicise investigations into firms' practices. We believe these have the potential to be effective in stopping early detriment to consumers as well as sending out a clear message to lenders that they cannot get away with practices that causes serious detriment to consumers. If sufficiently robust, we know that naming and shaming can change culture across the financial services sector.[6]

For example, this could have prevented Sale and Rent Back products from causing significant detriment to consumers earlier, before they were brought within FSA regulation.[7] In this instance, Shelter advisers were seeing significant numbers of cases where vulnerable homeowners were facing eviction after taking out these often exploitative products, but it took two years for the FSA to bring them within their regulatory framework and a further year for sufficiently robust rules to come into play. This caused prolonged and unnecessary anguish for consumers.

We would urge the Treasury to consider whether the current proposals to only ban products within the FCA's existing regulatory framework are sufficient, and whether a fast-track process could be instigated to allow FCA to bring wholly unregulated products, such as 'Sale and Rent Back', within their regulatory framework. Shelter believes this additional power would further enshrine a more proactive approach for the regulator, and prevent similar problems occurring in the future.

8) What are your views on the proposal to allow nominated parties to refer to the FCA issues that may be causing mass detriment?

Shelter provides face-to-face and telephone housing advice to struggling homeowners, and in the last year we gave direct advice to over 4,000 households with mortgage problems. As such we consider that Shelter and other advice agencies are well-placed to identify early consumer detriment caused by risky products. Indeed, agencies such as Shelter and Citizens Advice Bureaux were quick to raise concerns about poor arrears management practice by lenders and press the FSA to clamp down. Research commissioned by Shelter has found that 44% of homeowners with housing problems sought formal advice,[8] so we believe that nominated parties should be defined widely to encapsulate all independent advice agencies in order to allow the FCA to be most effective in identifying issues early.

9) What are your views on the proposal to require the FCA to set out its decision on whether a particular issue or product may be causing mass detriment and preferred course of action, and in the case of referrals from nominated parties, to do so within a set period of time?

It is vital this measure has teeth if it is going to act as a major disincentive to lenders to lend inappropriate products in the first place. We note that the Treasury has already made some concessions to lenders about the opportunity to appeal, and we would urge the Treasury to consider tight timescales for the FCA to come to a decision on a particular issue and agree a course of action. This would both create a disincentive for lenders and help protect consumers earlier, avoiding cases such as Sale and Rent Back products highlighted above.

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[6] Consumer Focus, 2009. Rating Regulators.

[7] 'Sale and rent back' or 'mortgage rescue' companies offer struggling homeowners the chance to stay in their homes when they can no longer afford their mortgage. The property is bought and rented back to them by the company. Before the FSA began regulation of the sector in July 2009, some companies took advantage of people's desperate circumstances by buying properties at much less than their market value, putting up rents to unreasonable levels or even evicting tenants from their own home for no reason.

[8] Shelter commissioned Professor Pascoe of University College London to investigate housing problems in England and Wales in 2011. These figures are based on interviews of 3.806 households, including 415 private renting households.

15) Do you have any comments on the proposals for the FSCS and FOS set out in paragraphs 2.196 to 2.204 and in Chapters 3 and 4?

Shelter believes the Treasury should consider whether the valuable consumer advice on financial products provided by the Money Advice Service would be well-supported by a more sustainable framework for independent advice for borrowers who are encountering difficulties with existing products. With cuts to legal aid it will be harder for advice providers to meet the demand for independent legal advice in arrears and repossessions cases.

Early advice is the best way to save money in the long term, for lenders and the government, by agreeing early forbearance plans. We know that independent advice can prevent struggling borrowers from losing their home and that £1 of housing advice saves £2.34 for the state, while £2.98 can be saved for every £1 on debt advice.[9] Furthermore, we believe it can bolster a strong consumer protection approach by ensuring that borrowers have adequate opportunity to challenge poor practice by lenders. We therefore suggest the Treasury consider whether the levy raised by the Financial Ombudsman Service should also contribute to a national funding framework for independent advice.

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[9] Citizens Advice, Towards a business case for legal aid, 2010.