

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

Irresponsible lending – a scoping paper

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 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 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 services 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.
- 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 this scoping paper on the Office of Fair Trading's (OFT) irresponsible lending project and agrees that greater clarity is needed as to the definition of irresponsible lending for the purpose of fitness tests under section 25 of the Consumer Credit Act. The expected outcome of guidance for credit licensees will be particularly useful in helping lenders to identify good practice and should be more detailed and comprehensive than the existing 1997 Non-Status Lending Guidance.

Given Shelter's speciality in housing and homelessness, our comments in this consultation response pertain primarily to *secured loans (second charge mortgages)* secured against residential property. We have noted the rise in repossessions in the current economic climate, including actions taken by second charge lenders. Shelter advice workers have reported some cases where possession orders are being carried out by second charge lenders who have only a relatively small charge in the property, and a worrying lack of forbearance and willingness to negotiate by some lenders. We are increasingly concerned about the potential uses of charging orders in the county court by creditors and poor consumer understanding of the implications of these. Greater and

protection against irresponsible lending through the licensing regime could help to curb these sorts of problems.

1. Do you agree with the OFT initial view that the scope should cover all stages of a lending transaction?

We agree that the scope should cover the whole life of a lending transaction. In particular, we believe that misleading advertising and aggressive selling techniques can lead consumers into products which are highly unsuitable for their needs, later causing real difficulty with repayments and the threat of repossession.

2. Are there any other factors which you think should be included within the scope of the project?

The CAB report 'Set Up to Fail' highlighted some of the problems associated with self-certification in mainstream mortgage lending, which could be equally problematic in relation to other credit secured against property.¹ We believe that the project should review the effectiveness of self-certification. Section 4.28 of the scoping paper, 'Appropriateness of product to borrower', should include:

- "Self-certification"

We consider that a key aspect of good practice in lending is for consumers to be provided with full and robust information in plain English, at an early stage of the lending process. Responsible lenders should also ensure that their customers are aware of sources of independent, good quality financial advice prior to accessing credit. This helps to ensure that the consumer is aware of the implications of their loan and has considered all the options, and is particularly important where the consumer has a limited understanding of financial risk. It is also beneficial for lenders to have the assurance that borrowers have 'shopped around' and sought advice, as they are less likely to fall into arrears if a suitable loan is selected. We would also like to see more lenders developing fair arrears management policies and making these publicly available, so that consumers can take this into account when making a decision. Therefore, we recommend that 'issues of relevance' in section 4.30 of the paper also includes:

- "Use of independent financial advice"
- "Arrears management policies"

¹ Tutton, P. and Edwards, S. *Set Up to Fail: CAB clients experience of mortgage and secured loan arrears problems*, Citizens Advice, December 2007

Given the dual regulatory system in the mortgage industry, with first mortgages regulated under the FSA Mortgage Conduct of Business (MCOB) rules and second charge secured loans regulated by the OFT, lenders need to take measures to ensure they are not duplicating possession actions. Paying due regard to data protection issues, we propose that the scope of this project also includes:

- “Improving communications between first and second charge secured lenders”

3. Are there any other factors which you think should not be included within the scope of the project?

There are no other factors that should be excluded from the scope of the project.

4. Do you have any other comments or suggestions on the scope of the project?

More broadly, we have some concerns that the dual system of regulation for mortgages and second charge secured loans can cause confusion for consumers. We would like to see a wider review of how regulation works in practice and the benefits of bringing second charge lending, mainstream mortgage lending and buy-to-let mortgages into a single regulatory regime. However, we accept that this question is outside of the scope of this consultation and welcome any moves to improve the existing system of regulation.

We are keen to know more about the expected outcomes of this project – how will the guidance be used and what will be the process for ensuring compliance?

5. Do you agree with or have any comments or suggestions relating to the proposed methodology?

We have no comments relating to the proposed methodology.

**Shelter Policy Unit
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