

04 February 2010

Mortgage consultation
c/o Michael Cornford
Banking and credit
HM Treasury
1 Horse Guards Road
London SW1A 2HQ

By e-mail to: mortgageregulation@hmtreasury.gsi.gov.uk

Dear Sir

Consumer Focus response to the HM Treasury consultation on mortgage regulation

Consumer Focus is the statutory organisation campaigning for a fair deal for consumers in England, Wales, Scotland, and, for postal services, Northern Ireland. We are the voice of the consumer, and work to secure a fair deal on their behalf.

We welcome the opportunity to comment on this consultation

Introduction

We agree that the financial crisis has shown that there is a need for considerable reform in the regulation of financial services. This has been particularly acute in relation to the mortgage market, where consumers have lost, or been put at risk of losing their homes, as a result of market instability caused by risky business practices. We would note, however, that while regulation of the mortgage market is a reserved issue, housing and debt issues (including those relating to repossession processes) are devolved and there is significant legislation and other work currently being taken forward by the Scottish Government in these areas. The different policy and legislative context in Scotland therefore must be taken into account when further developing these proposals.

Regulation of second-charge mortgages

Consumer Focus supports the transfer of second-charge mortgage regulation from the Office of Fair Trading (OFT) to the Financial Services Authority (FSA). This is on the proviso that, as set out in the consultation paper, the level of protection given to consumers is not lessened as result of the transfer.

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It will be more straightforward for consumers to have a single regulator responsible for all secured lending. It appears that, in any event, many of the lenders in this field already hold FSA licenses for carrying out FSA-regulated activities.

Our research into the problems that consumers were having managing their debt in the recession found that mortgage holders who had bought their homes under right-to-buy were more likely to have second mortgages secured on their property and that they were more likely to be struggling with keeping up with their mortgage payments¹.

In the light of the changes to the FSA's approach to mortgage regulation, as proposed in its recent *Mortgage Market Review*, it is important that all secured lending is subject to the same stringent regulatory requirements and that any potential for differences between the regulatory frameworks to be exploited should be eliminated.

Furthermore, introducing prudential regulation in the form of capital requirements to second-charge lenders should result in a more stable second-charge lending market. This will reduce the risk of future market failure as the result of unsustainable or irresponsible business practices.

We would also call for the transfer of regulation of second-charge mortgages to the FSA to result in the consistent collection of data on arrears and repossessions in both first and second charge mortgage markets and with an ability to distinguish between different types of mortgage (eg first charge, second charge, buy-to-let). This lack of information has meant that it has been difficult to be precise about the level of repossessions in the second-charge market. We would also point out in this regard that there is a lack of data available more widely in relation to repossessions in Scotland. The Repossessions Working group established by the Scottish Government,² of which Consumer Focus Scotland was a member, recently recommended that the FSA be asked to require lenders to provide regional data on repossessions on a regular basis, at least every six months, but ideally every quarter. This was thought to be a necessary step to understand the extent of the repossessions problem in Scotland and ensure the robustness of policy responses.³

Regulation of buy-to-let mortgages

We support the regulation of the buy-to-let market by the FSA. It is evident that there is a worryingly high level of arrears and possession in this market. Concerns about repossessions of buy-to-let properties, leading to tenants being evicted at very short notice, have led to the UK

¹ Consumer Focus, Right-to-Buy homeowners struggle to keep their homes: Managing debt in the financial crisis (July 2009).

² This group was set up to consider whether legal protection for homeowners in Scotland at risk of repossession is adequate and make recommendations about ways in which reserved or devolved legislation could be strengthened; to consider what else the Scottish Government, the UK Government and others such as lenders, advice agencies and legal services might do to help those at risk of repossession and reduce the risk of repossession. The final report can be found at <http://www.scotland.gov.uk/Resource/Doc/274765/0082205.pdf>

³ Scottish Government, Repossessions Group Final Report (June 2009) <http://www.scotland.gov.uk/Resource/Doc/274765/0082205.pdf>

Government consulting on proposals which include giving tenants in England and Wales the right to be heard in possession proceedings and two months' notice of eviction. The Scottish Government has also recently consulted on options for giving more protection to tenants in Scotland where residential property is being repossessed, including giving all tenants the right to be heard at repossession hearings, introducing new court powers to delay repossession for up to two months, or requiring lenders to repossess properties subject to the tenancy. A working group has now been set up to consider the best way forward, with a view to legislating on the issue in early course.

Research has also shown that landlords that are recent entrants to the buy-to-let market are particularly struggling in the recession⁴. These problems seem likely to be due at least in part to the recent poor lending practices in this area. Thus there is a strong case for regulation of this market.

We note that only buy-to-let lending to individual landlords or unincorporated partnerships will be regulated. While this covers the majority of landlords (73 per cent: *Rugg Review*, 2008), it still leaves a large proportion of buy-to-let mortgages unregulated. Clearly, it is appropriate to exempt business-to-business lending in relation to residential mortgage lending. However, doing so in relation to buy-to-let mortgages (which is essentially a business activity), would seem to risk not dealing effectively with the problems that have brought about the need for regulation in the first place.

Protecting borrowers when mortgages are sold on

We are in favour of the extension of FSA regulation to the acquisition of mortgage books. Thus borrowers would remain protected when mortgage books were sold on to firms which may not themselves be engaging in regulated activity (such as hedge funds or private equity firms).

Yours faithfully

Marie Burton
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⁴ 52 per cent of landlords with five or fewer years' experience 'were struggling or falling behind financially'. Shelter and the Money Advice Trust, *Taking the strain: the private rented sector in the recession* (November 2009)