

# **Response to Consultation Document: Regulating sale and rent back- the full regime**

**Issued by the Financial Services Authority**

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## 1.0 Background

1.1 Housing Rights Service was established in 1964 and is the leading provider of independent specialist housing advice services in Northern Ireland. We believe everyone has the right to a decent safe affordable home. Our services include:

- Providing a housing advice line
- Undertaking advocacy and legal representation on behalf of people with housing problems
- Providing online advice through our award winning website [www.housingadviceNI.org](http://www.housingadviceNI.org) and an email advice service
- Providing a specialist housing advice service within the prisons
- Delivering a skills and knowledge based training programme
- Producing information resources materials
- Supporting (in partnership with Citizens Advice and AdviceNI) generalist advice agencies to deliver high quality housing in their local communities
- Providing client based commitment to influence the development of relevant public policy and legislation
- Providing practical advice and assistance at court for possession proceedings and undertaking preventative policy work through our Preventing Possession Initiative.

All our services are delivered throughout NI and focus on the key areas of preventing homelessness; accessing accommodation; tackling poor housing conditions and affordability.

Funding for our work comes from a range of different sources. Our core services are funded by the Housing Division of the Department for Social Development NI.

1.2 The organisation first became involved in the provision of money advice and debt counselling in the early 1990s when interest rates, and also the number of homes being repossessed, were at record levels. As the primary purpose of our

organisation is preventing and alleviating homelessness, our debt advice is only available to clients who have a housing related debt (i.e. *mortgage/ rent or rate arrears*). The service provided is, however, holistic and takes into account all the client's outstanding debts.

In February 2009, Housing Rights Service launched its new "Preventing Possession Initiative." It adopts a twin track approach to preventing homelessness as a consequence of debt-related possession. Firstly an in-situ court representation service is available for owners and tenants facing possession. This seeks to make advice available, free of charge, to people facing the imminent threat of repossession, who do not have their own legal representation and who have not engaged with an advice agency prior to the court date. There is also a policy element to the project. Through engagement with government, lenders and landlords we aim to reduce the likelihood of possession actions being initiated in the first instance and to ensure that viable housing options are available for those at risk of losing their homes.

- 1.3 We welcome this opportunity to respond to this consultation on regulating Sale and Rent Back (SRB)- the full regime. In particular Housing Rights Service is supportive of the FSA's decision to extend consumer protection under the full regime.

In addition to responding to the specific questions raised in this consultation paper we have also offered a number of other related comments which we believe are significant for the FSA to consider when implementing the full regime. Housing Rights Service has long called for the need to regulate the SRB market and fully supports the introduction of the full regime from 30 June 2010.

Housing Rights Service is very much in favour of the regulatory regime for the sale and rent back market and supports the commitment by the FSA to implement a

risk-based proportionate regulatory regime for SRB sales. We believe that this approach is imperative in ensuring that potential consumer detriment is prevented and the appropriate level of protection is achieved.

## **2.0 General comments**

Housing Rights Service believes that the situation facing homeowners in Northern Ireland has not reached crisis level. Private SRB schemes have become increasingly popular with homeowners who want to remain in their homes but cannot afford the mortgage repayments and/or arrears repayments.

Private companies offering sale and rent back schemes have proliferated over the past few years. Many of these companies are operating in Northern Ireland where there is currently no government not for profit schemes available. This is leaving some people in desperate situations, with no other alternatives but to use private SRB companies. These companies target homeowners who are in financial difficulty and who are ultimately faced with repossession. They proclaim to offer an immediate and speedy solution to the homeowners current financial situation. Housing Rights Service is aware that some firms are making promises about lifelong tenancies that they fail to keep as well as paying way under the market price for the property. It is our experience through the work with our clients that:

- private companies often purchase properties at considerably less than the open market price
- many companies also carry out their own valuations and in many cases undervalue the property below market price
- post purchase, tenants are often charged market rates, which may not be any more affordable than their previous mortgage repayments

- under Northern Ireland law, private tenants are legally only entitled to a 6 month tenancy which offers little security of tenure
- as tenants they may are often not entitled to Housing Benefits to cover rental payments as it can be viewed as 'contrived.'

Ultimately, this may lead to households being drawn back into more financial difficulty.

In responding to this consultation, Housing Rights Service comments focus on consumer protection, based on the experience of our clients. We very much support strengthening consumer protection in the SRB market, and particularly welcome the decision to create a more comprehensive regime to address continuing areas of consumer detriment. On this basis we have responded to those questions which we believe are pertinent to this issue.

### **3.0 Specific responses**

#### ***Q1. Does our analysis fit with your understanding?***

Housing Rights Service agrees with the analysis of the SRB market and in particular support the finding that consumers engaging in SRB tend to be those who are in financial difficulties, potentially facing repossession and view SRB as a solution to their problems.

We have concerns regarding the small number of firms that applied only for advising and arranging, on the basis that they do not participate in SRB by way of business. Housing Rights Service is concerned, that although they are a small minority, there are still SRB providers in the market that are unauthorised which

could potentially lead to consumer detriment. However we welcome the FSA's commitment to actively monitor the market for unauthorised activity and encourage that they continue to do so.

**Q3. Do you agree with our approach to regulating SRBs?**

Housing Rights Service fully supports the approach in relation to creating a more comprehensive full regime to address continuing areas of consumer detriment. We view the interim regime as a speedy response and a short-term solution to preventing further consumer detriment in the SRB market.

We agree with the risks identified and believe that these risks are prevalent within the SRB market and therefore welcome more comprehensive rules to protect consumers. We have found, in our experience that consumers are entering into SRB agreements on the basis that they believe they will have long term tenancies thus giving them false security of tenure.

**Q5. Do you agree with our proposals on authorisation?**

Housing Rights Service agrees with the approach on authorisation. We particularly welcome the requirements for all firms to apply for authorisation, even those that are authorised under the interim regime, as the full regime provides more comprehensive protections for consumers.

Housing Rights Service acknowledges that some organisations should be exempted from authorisation. The consultation document states that Registered Social Landlords (RSL) should be exempt. Likewise, we would recommend that Registered Housing Associations in Northern Ireland be exempt on the basis that they would be key to a government backed Mortgage Rescue Scheme if introduced in Northern Ireland. The Department for Social Development's

proposal is currently that Registered Housing Associations would purchase the properties under this scheme and rent them back to the occupiers. It will therefore assist government policy to exempt RHAs from seeking authorisation.

**Q6. *Do you agree with our approved persons proposals for SRB?***

Housing Rights Service welcomes the proposals that firms authorised under the full regime will be subject to the Approved Persons test and should be treated in the same way as other home finance firms. However, we believe that 'customer facing' functions should also be subject to the Approved Persons test given the potential consumer detriment that can operate within the SRB market.

We believe that the Approved Persons test is more significant in the SRB market given the potential levels of risk and, on this basis, we urge the FSA to extend the Approved Persons test to SRB advisers and/or arrangers who deal with consumers ("consumer facing" functions) and to those advisers and/or arrangers who are responsible for overseeing compliance ("compliance oversight" functions). The Approved Persons test should not just be limited to those deemed to have 'significant influence' but to all advisers who are selling SRB products and who have direct contact with consumers.

The Mortgage Market Review has included proposals to extend the Approved Persons regime through the application of CF30 (consumer function) and CF10 (compliance oversight) to mortgage (and other home finance) advisers and/ or arranging. We wholly support this approach as we believe this is an area of SRB firms that should not be excluded from the Approved Person regime.

**Q7. Do you agree with our approach to dealing with unauthorised business?**

Housing Rights Service welcomes proposals that would build on the requirement specified under the interim regime. However, we share concerns regarding those not conducting SRB business 'by way of business', due to the lack of consumer protection within this area. Whilst we fully support the additional consumer protections proposed within point 4.2.5 of the consultation document, we strongly encourage the FSA to proactively monitor the market for unauthorised business to ensure that the 'by way of business' criteria is being strictly adhered to.

We fully support and encourage the FSA in actively monitoring the SRB market for unauthorised business and the commitment to continuing this under the full regime. However, Housing Rights Service seeks clarity as to how the FSA, in conjunction with the Unauthorised Business Enforcement Team, are actively monitoring and what procedures they are using to identify unauthorised firms. Also we seek clarity as to whether this monitoring is proactive or dependent on consumer complaints?

**Q12. Do you have any comments on our proposed approach to supervision of SRB firms?**

Housing Rights Service welcomes the proposed approach to supervision of SRB firms as we believe this will help eliminate risk to consumers and ensure appropriate, consistent standards across the SRB market.

We recommend a proactive approach by the FSA, for example through random quality audits of SRB firms policies and procedures, in addition to the variety of ways stated in points 6.13- 6.16. This could provide another effective tool to obtain data to develop risk profiles for individual firms.

**Q17. Do you have any comments on the proposed reporting requirements?**

Housing Rights Service is very pleased that SRB firms will have to report to the FSA about complaints received in line with DISP 1.1. Housing Rights Service advocated for this reporting requirement in our response to the consultation on the SRB interim regime. We believe that this is a significant measure in ensuring authorised SRB firms are operating within the appropriate standards.

**Q.18 Do you agree with our approach to financial promotions and communications?**

Housing Rights Service welcomes the approach to financial promotions and communications as we believe that consumers considering SRB are often vulnerable. A comprehensive set of financial promotions rules under MCOB. 3 are another safeguard that will protect the consumer.

Although we fully support the requirements under MCOB 3.8B.1R, we would like to see included a requirement that financial promotions should contain no use of technical or legal jargon as well as being 'clear, fair and not misleading.' We believe it is imperative that all promotions should be displayed in 'layman's terms' to ensure that the information is not misconstrued or misrepresented.

On the above basis, we recommend that a key terms statement is automatically given to the consumer rather than the requirement that they must request one. This would guarantee the consumer having access to all relevant information, including risks, before entering into further discussions regarding SRB.

We also recommend that in addition to including a prescribed risk warning (MCOB 3.8B.4R(2)), we would advocate that this warning would be outlined clearly on all promotions and not in small print.

As an organisation, we would like to reiterate our concerns, as stated in our response to the interim regime, about the “light touch” approach of MCOB guidance in general and believe that this may not prove an effective tool for addressing high pressure selling.

***Q.19 Do you agree that there should be an affordability and appropriateness test across all sales?***

Housing Rights Service fully supports the need for an affordability and appropriateness test across all sales given the potential detriment to consumers. Often the rental payments under SRB are as expensive as the mortgage payments which were the cause of their financial difficulty and subsequent move to the SRB market.

To ensure that the consumer does not continue to place themselves in further financial difficulty and, in a property that they are unable to afford, it is vital that affordability and appropriateness tests are implemented across all products.

***Q.20 Do you have any comments on how firms should be required to assess affordability?***

Housing Rights Service supports the principle of having affordability tests but feel there could be a conflict of interest. We agree that affordability should be assessed on the basis of customer’s disposable income only and that firms should not rely on any lump sums received in order to make a proper assessment of affordability. We also support the recognition that an SRB firm may have insufficient knowledge surrounding the complexities of drawing up financial statements and of social security rule, for example housing benefit, and

particularly welcome that a SRB firm must contact an appropriate agency to clarify any issues relating to consumer benefits.

We fully support the requirement for firms to keep a record of the information they use in their assessment of the affordability (MCOB 4.11.7R). This is an effective tool for monitoring SRB firms and ensuring that they are adhering to appropriate standards.

However we have concerns whether an SRB firm will have the necessary expertise and training to effectively assess a consumer on affordability and appropriateness. As well as a potential conflict of interest in SRB firms carrying out this function. We therefore ask the FSA to satisfy itself that SRB firms will be able to provide specialist advice and assessment in relation to affordability and appropriateness?

Housing Rights Service would recommend, in order to ensure that SRB firms are adhering to the appropriate standards of consumer protection, that there be a requirement for SRB firms to attend recognised training in the areas of affordability and appropriateness tests e.g. Money Advice Trust- Wiser Adviser training.

***Q.21 Do you agree with our proposals for all firms to provide a factsheet to consumers as part of the sales process?***

Housing Rights Service agrees with proposals to issue a factsheet to potential SRB sellers. We believe that this will be a useful tool for encouraging customers to consider whether SRB is the right option for them and also what alternatives may be available to them.

***Q.22 Do you have any comments on the proposed content of the factsheet?***

Housing Rights Service propose that the factsheet advises a potential seller to seek free independent advice and list sources available in local jurisdictions as well as online information e.g. [www.housingadvice.NI.org](http://www.housingadvice.NI.org) as many consumers are unaware of the free independent advice that exists. We also propose that the factsheet includes a list of alternatives that a potential seller may wish to explore. Often potential SRB sellers see SRB as the only option available to them and fail to explore other alternatives that may prove viable for their financial situation.

***Q.23 Do you agree with our proposals to introduce a cooling-off period?***

Housing Rights Service is very pleased to see that the FSA has taken on board our recommendation to introduce a cooling-off period. Housing Rights Service considers this to be an effective measure in addressing the concerns regarding situations when unreasonable pressure is placed on vulnerable consumers. We believe that a cooling off period will enable potential SRB sellers to effectively assess all their options and seek independent advice. In our experience, as an advice agency, we have seen the repercussions of high-pressure selling on vulnerable consumers and as a result decisions have been made that have left consumers in a worse financial situation than when they first agreed to SRB.

***Q.24 Do you agree that the cooling-off period should be 14 days? How long do you think the cooling-off period should be?***

Housing Rights Service believes that fourteen days may not be long enough to enable a potential seller to obtain independent debt advice and make an informed decision based on this advice.

Given the pressure on advice agencies, 14 days may not be long enough to gather necessary advice and the time to consider all options. Therefore we disagree with the FSA's reasoning behind not extending the cooling off period to 21 or 28 days,

given the serious and significant implications of making this decision. We consider that 28 days is needed to ensure the consumer is given the opportunity to explore all alternatives and advice available to them.

On this basis, Housing Rights Service proposes twenty eight days as more appropriate to enable a potential seller to access advice and consider their options fully.

***Q.26 Do you agree that our approach of valuations strikes a reasonable balance between the consumer's interest in an unbiased view of the property value and the cost to them of commissioning their own valuation?***

Housing Rights Service supports the view that it would not be appropriate to expect a consumer, in financial difficulties, so pay upfront costs for a valuation as this adds further unnecessary financial burden on the consumer.

However, we seek clarification regarding who would incur the cost of the independent valuation as the consultation document does not specifically state this.

***Q.27 Do you agree with our proposal for the valuer to owe a duty of care to the consumer as well as the firm?***

Housing Rights Service strongly agrees with this proposal given the potential detriment to the consumer and the requirement that a valuer must protect consumers' interests as well as SRB firms.

**Q.28 Do you agree with our initial disclosure proposals?**

Housing Rights Service agrees with these proposals however, we wish to emphasise that the presentation of the initial disclosure information should be stated in clear, plain English and should not contain any technical legal jargon.

We also recommend that information regarding security of tenure should be included within the initial disclosure stage as we believe this is vital information that should be disclosed to a potential SRB seller from the outset.

**Q.29 Do you agree with our proposals regarding a key terms statement?**

Housing Rights Service welcomes a key terms statement as we believe this will give potential SRB sellers all the important information they require to be able to make an informed decision as to whether this is the correct option for them. We particularly welcome the inclusion of the risks associated with an SRB agreement as it is imperative that consumers are made aware of the risks involved.

However, as an organisation, we would reiterate our concerns regarding the differences in tenancy law between Northern Ireland and England & Wales and this information should be tailored for appropriate legal jurisdiction.

We also fully support the proposal to include information regarding their entitlement to make a complaint to the Financial Ombudsman Service as well as their entitlement to compensation under the Financial Services Compensation Scheme (FSCS). We believe these elements further strengthen consumer protection and help counter the detriment within the SRB market.

**Q.32 Do you agree with our approach not to impose minimum standards for products?**

Housing Rights Service is disappointed that minimum standards are not contained within this approach given the risk of detriment to consumers. Minimum standards would have further strengthened consumer protection however we look forward to post implementation review which promises to revisit this area.

**Q.33 Do you agree with our proposal that to provide consumers with security of tenure, a tenancy agreement under a SRB agreement must be an assured tenancy?**

Housing Rights Service is disappointed that the FSA has chosen not to tailor specific information, regarding security of tenure, to different jurisdictions. The FSA should be aware that tenancy law in Northern Ireland is different to that of England & Wales and shorthold tenancies do not exist in Northern Ireland.

Private tenancy law in Northern Ireland operates under the Private Tenancies (NI) Order 2006 which is distinctly different to the Housing Act 1996. The maximum security of tenure afforded to tenants in Northern Ireland is for a period of 6 months only, but it is not a shorthold tenancy.

It is therefore necessary for tailored information, reflecting the differences in tenancy law, to be produced for different legal jurisdictions.

**Q.34 Do you agree with our proposal to apply a rule on excessive charges?**

We fully support a rule on excessive charges given that the majority of consumers considering SRB are in financial difficulties. Any further excessive charges will only

add more financial burden on them. However we would ask the FSA to clarify what they define as 'excessive charges?'

***Q.35 Do you have any comments about our approach to record keeping?***

Housing Rights Service recommends that all records are kept for three years, rather than issuing different lengths of time for the various sections relating to how firms comply with FSA requirements regarding SRB agreements. We believe that this will promote consistency and that the various sections are of equal importance regarding monitoring SRB firms' compliance with FSA rules.

***Q.37 Do you agree with our proposal to apply DISP complaints reporting rules to SRB firms?***

Housing Rights Service wholly supports and commends the commitment of FSA to apply all DISP complaints reporting rules to SRB firms as we believe this will give greater consumer more protection and allow them access to appropriate complaint mechanisms.

***Q.39 Do you agree with our proposals to include advisers and arrangers within the scope of the FSCS?***

Housing Rights Service welcomes this proposal as we believe it extends much-needed protection and provides consumers with their right to a system of independent redress.

**Q.40 Do you agree that providers and administrators should not be brought with the scope?**

Housing Rights Service is disappointed that providers and administrators are not going to be included under the scope for FSCS as we believe that consumer detriment is evident in all aspects of SRB, including providers and administrators.

However, we welcome the requirements contained within Point 10.17 of the consultation document, Housing Rights Service encourages the FSA to consider including providers and administrators within the scope of the FSCS in the future to ensure the interests of consumers are completely protected.

***Q.42 Do you agree that the FOS should extend the scope of its voluntary jurisdiction to include SRB activities and operation of multilateral trading facilities?***

Housing Rights Service support the extension of the scope of the Financial Ombudsman's Service as we believe this will give consumers more rights and further protections against the detriments of the SRB market.

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