

# **Response to Consultation Document: Mortgage Market Review: Arrears and Approved Persons**

**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 a specialist Mortgage Debt Advice Service pilot for people who face losing their homes through debt
- 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 and representation 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 the Consultation paper: The Mortgage Market Review: Arrears and Approved Persons. Housing Rights Service considers a more strengthened regulatory approach to arrears charges and the approved person's regime to be long overdue.

## 2.0 General comments

Financial crisis and debt are important triggers to homelessness which has a devastating effect on families. Housing Rights Service statistics indicate that in 2008/09, there was more than a 500% increase in the number of clients Housing Rights Service advisers represented at possession proceedings in court compared to the previous year. Regrettably, in our view, a significant number of these could have been avoided if a more effective regulatory framework had been in place to ensure that responsible lending and responsible borrowing practices were conducted from the outset. In light of this we made our response to the Mortgage Market Review consultation in January 2010.

In terms of the specific focus of the Mortgage Market Review: Arrears and Approved Persons we welcome the opportunity to respond to this consultation. Housing Rights Service, through the experience of our clients, is aware of questionable lender practices operating in Northern Ireland that are too focused on the profitability of the business rather than treating customers fairly.

Housing Rights Service welcomes proposals to strengthen the Mortgage Conduct of Business Rules. Housing Rights Service, as an organisation, has viewed the current approach as too light touch and open to exploitation. We therefore, welcome any measures that will present a more interventionist and robust approach.

Housing Rights Service believes that unnecessary and excessive arrears charges are a significant problem within the mortgage market. These charges unload further financial burden on consumers who are already struggling to clear existing debts. Charges also vary greatly and we believe they are often not reflective of true underlying costs. Some lenders even continue to add charges where an acceptable repayment agreement has been reached.

Housing Rights Service also welcomes FSA proposals aimed at strengthening its approach in relation to the Approved Person Regime. We believe that this is greatly needed to ensure that all individuals are responsible and accountable for their actions and rogue individuals are prevented from entering the industry.

Housing Rights Service must point out that there is a need for sufficiently resourced and rigorous monitoring and enforcement procedures if the proposals are to be effective.

In responding to this consultation, our comments are focused on consumer protection based on the experience of our clients. We very much support strengthening consumer protections in the mortgage market through strengthening arrears rules and extending the approved persons regime. On this basis we have responded to those questions which we believe are pertinent to consumer protection.

With the dramatic increases in the number of homeowners facing repossession in Northern Ireland, Housing Rights Service urges the FSA to implement these proposals as soon as possible.

### **3.0 Specific responses**

**Q1. *Do you agree with our proposal to clarify our requirement to prohibit lenders from levying an arrears charge where customers have a performing arrangement to repay the arrears in place?***

Housing Rights Service wholly supports the proposals to clarify and strengthen rules relating to charging practices. We agree with measures to prohibit charges when a consumer is adhering to an existing arrangement to repay arrears. For a

lender to continue to bill a borrower for monthly arrears charges when they have entered into a repayment agreement is completely unacceptable. They are an arbitrary charge that can make it impossible for a borrower to address their debt and get their mortgage back on track.

Housing Rights Service believes this prohibition will go some way to assist consumers to concentrate on dealing with their existing debts and manage their way out of debt more effectively. However, we consider that there needs to be due consideration given to borrowers who have tried to arrange a repayment plan but have encountered problems with uncooperative lenders. The rule should apply to all borrowers who have at least tried to reach an agreement.

**Q2. *Do you agree with our proposals to convert current MCOB guidance to rules?***

Housing Rights Service has long argued that lenders should consider all options before repossession and that court action must be a last resort. We wholly support the FSA's proposal to convert MCOB guidance to rules and particularly welcome the proposal to change MCOB 13.3.2E. This will ensure that firms, not only have a written policy and procedure on fair customer treatment, but also deliver on these standards when dealing with customers in payment difficulties.

Housing Rights Service however, considers that there are some additional specific areas which we feel could be strengthened. It is our view that lenders should be required to signpost borrowers in difficulty to, and where necessary make referrals to, sources of free, impartial advice. We would also like the rules strengthened in terms of making it a requirement for lenders to make their policy available to the FSA, customers and advisers. Housing Rights Service considers such measures integral in the interests of transparency and clarification.

Housing Rights Service wholly agrees with the findings from the thematic review that firms are often too quick to take repossession action, focusing too strongly on recovering arrears without reference to the borrower's individual circumstances. We believe that it is imperative that all firms consider the individual circumstances of the borrower and explore forbearance options to allow the borrower to effectively manage their way out of debt. We believe that by making guidance will help to crystallize this approach. Housing Rights Service is supportive of measures that ensure consumers in arrears are treated fairly and that this is applied consistently by lenders.

Housing Rights Service is however disappointed that the consultation contains no detail as to how the FSA intends to improve its own practices to enforce the terms of the revised rules. We call for greater sanctions and mechanisms for redress.

**Q3. *Do you agree that regard to government schemes should be included as a potential forbearance option?***

Housing Rights Service welcomes the proposal to include government schemes as a forbearance option. We fully support all tools that can be used to help consumers in arrears. Housing Rights Service believes this will allow consumers access to adequate assistance to help them manage their way out of arrears as well as prevent unnecessary repossessions and retain their home.

The FSA should be aware that consumer access to government schemes in Northern Ireland is not on a par with those available in England and Wales. In terms of Mortgage Rescue, the only schemes available in Northern Ireland are offered by private sector players who are operating essentially to make a profit.

The absence of not for profit mortgage rescue schemes in Northern Ireland provides consumers here with fewer options.

**Q4. Do you agree with our proposal to use guidance to clarify our current requirements prohibiting the inclusion of arrears charges and accrued interest on the charges within ERCs?**

Housing Rights Service wholly supports this proposal and believes that it will help prevent, what we consider, to be extremely unfair excessive charges against consumers already heavily indebted. We are aware, through the experience of our clients, that there have been alarming practices whereby excessive additional charges are being added to arrears charges. Subsequently, such excessive charging has made it often impossible for the debtor to service the debt.

Housing Rights Service considers a lack of prescriptive rules in relation to arrears charges as a major contributor to the unfair treatment of consumers. We would therefore urge the FSA to ensure that there is total clarity and robustness regarding the rules applicable to arrears charges.

**Q5. Do you agree with our proposals to implement record-keeping requirements for telephone calls?**

Housing Rights Service welcomes the proposal to implement record-keeping requirements for telephone calls as we believe this will provide more protection for consumers. In our experience, there have been many instances where consumers are not being treated fairly when they fall into payment difficulties. In essence, some firms are often too quick to proceed to repossession action without engaging with the borrower to explore alternatives. In some instances, we have in fact, identified unscrupulous practices whereby firms are refusing to

enter into reasonable arrangements to repay arrears with consumers and proceeding directly to possession action.

We believe that telephone calls provide an important evidence base in relation to the level of the lenders engagement with customers in arrears. This is particularly helpful in demonstrating what measures have been taken to resolve matters and avoid court proceedings in accordance with the Pre Action Protocol.

The FSA should review quality of telephone advice on a regular basis, and publish reports on its findings.

**Q6. Do you agree with the extension of the period for all arrears records from twelve months to three years?**

Housing Rights Service wholly agrees with the proposals to extend the period of arrears records as we believe this will be essential for monitoring purposes, It will also provide further protection for consumers.

**Q7. Do you agree with our proposal to clarify our current requirements for borrower payments to be allocated to paying off arrears before charges?**

Housing Rights Service agrees that the borrower repayment arrangements should be allocated to paying off arrears. We agree with the FSA analysis that by levying additional arrears charges consumers end up in a cycle of only ever addressing arrears charges and are not able to manage their way out debt. On this basis, it is imperative that the consumer is able to service the debt as quickly as possible and this proposal will help ensure this.

Housing Rights Service also urges the FSA to address the matter of excessive practices in terms of pricing structures. This in our view is fundamental to

tackling the high level of consumer detriment as a result of unfair and excessive charging.

**Q8. Would our proposals to change MCOB affect firms' ability to improve consumer understanding of the arrears statement?**

In our experience, there is poor consumer understanding of arrears statements because of the various component charges and how they are levied. This is further perpetuated by the inconsistent approach amongst the mortgage industry. Housing Rights Service believes that the proposed rule changes to MCOB will help create a more standardized approach to arrears management practices.

**Q12. Do you agree with our proposal to extend the regime, specifically a new customer function CF31, to include all individuals who currently, or in the future, advise on home finance transactions?**

Housing Rights Service wholly supports the extension of the Approved Person's Regime as we believe it is vital that individuals advising on home finance transactions are held accountable for the advice they provide. We feel extending the Approved Person's Regime will further strengthen consumer protection by ensuring appropriate standards are applied consistently amongst individuals advising on home finance transactions.

Housing Rights Service has identified gross failures with regard to advising standards and transparency in the 'sub prime' segment of the market. Typically, consumers who borrow from the sub-prime lenders tend to be more vulnerable, less financially literate and more likely to have a limited ability to repay a loan.

The lack of regulation amongst individuals advising on home finance transactions has enabled rogue individuals to move freely within the industry.

**Q13. Do you agree with our proposal to extend the regime, specifically a new customer function CF31, to include those individuals who currently, or in the future, arrange (bring about) home finance transactions whether on behalf of an intermediary firm or a home finance provider as described in paragraph 10.2?**

Housing Rights Service wholly welcomes this proposal on the basis that it will help strengthen the gateway and allow the FSA to prevent unfit or rogue individuals from entering the industry. Housing Rights Service has experience whereby individuals representing firms have arranged mortgage transactions that were never going to be serviceable by the consumer.

We believe that this new customer function will introduce greater checks and balances in the mortgage industry by ensuring that individuals arranging home finance transactions are regulated by and accountable to the FSA. These proposals will allow the FSA to intervene and take swift action against individual advisers and arrangers that fail to meet FSA standards and expectations.

**Q14. Do you agree that it is appropriate to extend the regime, specifically a new customer function CF31, to include those individuals who currently, or in the future, arrange (enter into) home finance transactions on behalf of a provider, as described in paragraph 10.2?**

Housing Rights Service supports the FSA's proposals and believes it is appropriate to ensure the highest standard of consumer protection is implemented across the industry. We believe that all individuals whether they are advising or arranging should be regulated and accountable for their actions.

We believe that it is imperative that problematic individuals are prevented from freely moving around the industry. Housing Rights Service has witnessed first hand instances whereby individuals struck of by the FSA have continued to arrange home finance transactions under a different name. Taking this into account, it is therefore vital that such abuse of the system is prevented.

By strengthening the scope of the approved person's regime and the way that it is regulated these individuals should be more easily traceable and sanctioned.

**Q15. Do you agree with our proposal to extend the compliance oversight function (CF10) to home finance activities?**

Housing Rights Service supports this proposal as we believe it is vital that there is a named individual responsible for overseeing compliance and oversight of a firm's regulated activities. Whilst we endorse the FSA's proposal we require more detail as to how this will be effectively regulated and monitored. Without this it is difficult to know how the FSA will ensure firms comply and to what extent it will strengthen the standards of probity within the market.

**Q16. Do you feel that our proposals to require criminal record disclosures are proportionate?**

Housing Rights Service endorses the FSA's analysis that with sole traders and single director firms, the authorized firm is often the individual itself, therefore warranting a higher level of checks.