

Response to Consultation Document: Second Charge Lending-OFT Guidance for Brokers and Lenders

Issued by the Office of Fair Trading (OFT)

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Introduction

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 and an email advice service
- Providing a specialist housing advice service within the prisons
- Delivering a skills and knowledge based training programme
- Producing information resource 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

Overall, we work to achieve positive change by protecting and promoting the rights of people who are in housing need in Northern Ireland. Our policy work is based on the experience of our clients and our work actively supports current government policy commitments in the broader areas of:

- Tackling Poverty and Promoting Social Inclusion
- Promoting Access to Social Justice
- Preventing Homelessness and Meeting Housing Need
- Promoting Equality and Better Relations
- Working in Partnership with the Voluntary Sector

Our core services are funded by the Housing Division of the Department of Social Development.

Housing Rights Service welcomes the publication of this OFT consultation on Guidance for brokers and lenders on their business practices and procedures within the second charge lending sector. As a result of the current economic climate, Housing Rights Service has experienced an increase of 300% in the number of people seeking help as a result of mortgage or secured loan arrears.¹ We are very supportive of, and encouraged by, the publication of this guidance on second charge lending. We acknowledge that whilst many lenders and brokers act responsibly, some others do not. From the experience of our advisors at Housing Rights Service, there has been rising concern about the selling of loans where there is inability to repay and concerns about intermediary practice. We believe that the publication of guidance in this area is timely; however, we have a number of concerns which will be highlighted in the following sections.

General Comment

We note that this guidance is to be read in conjunction with a number of other pieces of guidance such as the OFT Non Status Lending Guidelines and the OFT's General Fitness Guidance. We believe that potentially separate pieces of guidance may give rise to confusion and would recommend the publication of single, accessible piece of guidance for brokers and lenders.

We would also like to highlight from the experience of our advisers, the lack of consumers' awareness amongst our clients regarding the role of the OFT. We acknowledge that this is not within the scope of this consultation. We would recommend however that when a borrower is provided with a credit agreement at sign up stage, that they could be given a leaflet about the role of the OFT. Given the lack of consumers' awareness about regulation of financial services which is very complex, we would also recommend that second charges are regulated under the same regulatory regime as first charges to make the system easier for consumers to understand.

¹ <http://www.housingrights.org.uk/policy/tackling-housing-debt-and-affordability.html>

Specific Comments

General Principles of Customer Care

We support the general principles of customer care contained on the consultation which include:

- Transparency;
- No high pressure selling;
- No irresponsible lending;
- Fair and clear contract terms;
- Use of repossession as a last sort;
- Lenders taking joint responsibility for acts or omissions of brokers; and
- Lenders and brokers should not act in a deceitful, oppressive or unfair way.

However, we believe that the language contained throughout the consultation is not strong enough, given that the consequence of misselling could result in repossession. Throughout the consultation the words “should not” are used and we would recommend that this be changed to “must not” which we believe would further enhance the effectiveness of the guidance.

Section 2.1 of the Guidance states that “there should be transparency in all dealings with potential and actual borrowers...” We suggest the guidance should include that lenders and brokers in their policies and procedures should state that credit agreements should be in plain English. They should also be clear and should not include technical legal jargon. This would assist in promoting transparency.

We particularly agree with the principle in section 2.1 of the guidance that lenders and brokers procedures and policies should include that “there should not be any irresponsible lending...” We note that there will be a further consultation in autumn on irresponsible lending; however without the guidance at this time, it is unclear what this in effect means. In our experience of second charge lending, assessing affordability is the biggest issue and we believe that stronger guidance is needed to safeguard borrowers

given the increased risk of repossession. However, we look forward to the OFT's consultation which hopefully will provide further clarification on the issue of irresponsible lending.

Contract Issues

We note in section 4.2 of the guidance that lenders' and brokers' policies and procedures should set out that the borrower should consider obtaining independent legal or other advice before entering into a credit agreement. We would like to highlight that Money advisors are not financial advisors and we would ask the OFT to clarify what they perceive the advice role to entail.

We welcome guidance that APRs must be accurate and the guidance in section 4.4 that variations should be explained in full. We recommend that this should be explained in writing and those lenders and brokers should comply with this. In our experience, borrowers are often given information on the daily interest rate which can be misleading. We suggest that this guidance should provide examples of potential scenarios, which we feel would be useful.

Section 4.5 of the guidance sets out that early settlement charges should be fair and reasonable. We would ask the OFT how it will monitor that early settlement charges are fair. This section also states that the consumer should be able to repay part of the capital at any time. We recommend that the guidance also includes that the consumer should not be penalised as a consequence of early settlement.

The guidance in section 4.6 states that brokers and salespersons should ensure that all information on a loan application is correct and should not encourage or allow borrowers to falsify details. We recommend that the guidance should ensure that lenders' policies and procedures contain safeguards such as ensuring lenders check that loan application details are correct. In our experience, there have been cases where

affordability is an issue, for example where clients have been on benefits or are on low incomes and some lenders have not sought to ensure client can afford repayments.

Post Contractual Issues

The guidance in section 5.1 sets out that the lender should notify the borrower each month in writing of the current amount of arrears along with amounts paid and unpaid since last notification. We are in support of such communication, however we have concerns about charges that will be applied for letters which potentially in turn could cause arrears charges to spiral out of control. We would suggest that guidance should specify the number of letters that lenders can send out a month and specify an actual maximum amount that can be charged by lenders for letters. We believe that this would ensure transparency, consistency and fairness.

In Section 5.2, the guidance should be limited to what is reasonable and should cover no more than covering lenders necessary administrative costs. We would suggest that the guidance should specify that lenders are transparent and consistent in their policies for setting charges.

Possession Actions

We welcome the guidance in relation to possession actions but feel that some improvements could be made. Section 6.3 of the guidance states: "Lenders should not seek to repossess the borrower's property except as a last resort." In our experience, it is not always first charge lenders who initiate repossession actions. We have found second charge lenders have pursued repossession action more vigorously than first charge lenders. We recommend that the guidance should state something to the effect that there should be good lines of communication between first and second charge lenders with regards to repossession.

We also recommend that the guidance should include that second charge lenders should not pursue repossession action where a first charge lender has initiated proceedings. This would minimise court costs for the borrowers and minimise further potential distress.

Regulatory Compliance

The consultation document states that where the OFT identifies "non-compliance with the law or guidance that it will decide on the appropriate regulatory response...." Housing Rights Service would ask the OFT to clarify how it will identify non compliance. For example, will the OFT proactively audit lender and brokers policies and procedures for compliance with the guidance, or will identification of non compliance depend on consumer complaints? We recommend a proactive approach by the OFT, for example through annual quality checks of lenders policies and procedures as well as investigation of consumer complaints.

Conclusion

Housing Rights Service welcomes publication of guidance for lenders and brokers in the second charge lending sector. Whilst welcoming the guidance, we have offered some constructive suggestions as to how it can be improved or areas which require further consideration. We welcome the opportunity to submit a response on this consultation and would be happy to discuss this further if required.

Summary of Recommendations

We recommend that:

- OFT should publish a single, accessible piece of guidance for brokers and lenders.
- When a borrower is provided with a credit agreement at sign up stage, that they should be given a leaflet about the role of the OFT.
- Second charges are regulated under the same regulatory regime as first charges.
- Throughout the consultation the words “must not” should be used (rather than “should not”).
- Guidance should include that lenders and brokers in their policies and procedures should state that credit agreements should be in plain English, be clear and should not include technical legal jargon.
- Variations in APR should be explained in writing.
- The guidance on APR should provide examples of potential scenarios.
- The guidance should specify that the consumer should not be penalised as a consequence of early settlement.
- The guidance should ensure that lenders’ policies and procedures contain safeguards such as ensuring lenders check that loan application details are correct.
- Guidance should specify the number of letters that lenders can send out a month and specify an actual maximum amount that can be charged by lenders for letters.
- The guidance should specify that lenders are transparent in their policies for setting charges.
- The guidance should state something to the effect that there should be good lines of communication between first and second charge lenders with regards to repossession.
- The guidance should include that second charge lenders should not pursue repossession action where a first charge lender has initiated proceedings.

- OFT adopt a proactive approach in dealing with non compliance, for example through annual quality checks of lenders policies and procedures as well as investigation of consumer complaints.

For further information contact:

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