

Financial Services Consumer Panel

AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

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30 November 2009

Our ref: sale/rent back

Dear Ms O'Brien

Regulating Sale and Rent Back - the full regime

The Financial Services Consumer Panel's responded to the Treasury Consultation Paper on regulating the sale and rent back market and welcomed FSA regulation of the sale and rent back market. The Panel is therefore pleased to be able give a warm endorsement to the full regime outlined in this Consultation Paper.

We believe that sale and rent back is an area where there are strong risks of significant consumer detriment and the regulator has to provide consumers with effective protection. In particular we are concerned that some consumers may be vulnerable to pressure to engage in such a contract when this may not be in their best interest.

In particular we welcome the FSA's approach to regulating financial promotions in this area. Banning cold-calling, leaflet dropping and the use of emotive phrases in promotional material will help mitigate the risk of mis-selling to vulnerable consumers.

The regime also requires a robust approach to guarantee that sales are appropriate and affordable. In particular, the impact of a contract on the recipient's access to means-tested benefits will have a significant impact on establishing whether the product is appropriate to the needs of the customer. We welcome the production of an FSA factsheet to be presented to consumers at appropriate stages in the sales process. We are also pleased that the factsheet will encourage consumers to seek independent advice. We would, however, prefer to see a longer cooling off period of 28 days to enable customers to properly think through the implications of entering into the contract.

We have set out our answers to the specific, consumer focused questions posed in the consultation paper below.

Yours sincerely

A handwritten signature in black ink that reads "Adam Phillips". The signature is written in a cursive style with a long horizontal stroke at the end.

Adam Phillips
Chairman
Financial Services Consumer Panel

Q1: Does our analysis fit with your understanding?

We note the discrepancy between the OFT's estimate that there was likely to be over 1000 firms operating in the SRB market but only 80 firms have sought FSA authorisation. Whilst the financial crisis will have reduced the number of firms in the marketplace, this strikes us as a significant discrepancy, recognising that such products provide opportunities for the unscrupulous to exploit vulnerable consumers.

We are reassured that the FSA intends to monitor the market for unauthorised activity and that those firms who engage in any unauthorised activity will be committing a criminal offence. We would wish to be properly satisfied that the FSA has appropriate mechanisms in place to ensure that any unauthorised activity is identified and prompt action is undertaken. We are concerned about the risks taken by consumers who unwittingly deal with unauthorised firms and would like to seek assurance that appropriate protections could be given to such consumers.

Q3: Do you agree with our approach to regulating SRBs?

We strongly support the FSA's approach to regulating SRBs. We recognise the risks facing consumers arising from high pressure selling and inappropriate sales. We believe that the interests of consumers will be best protected by the application of comprehensive rules. In particular we welcome the proposed regime for dealing with financial promotions and we welcome a robust set of rules governing the advice and selling process.

We understand why the FSA is supervising these firms in line with the general approach to smaller firms. However, as we said in our response to the

consultation on the interim regime, we do believe that the potential for consumer detriment is such that we would encourage the FSA to undertake regular visits to SRB firms.

We also believe that there is considerable risk of consumer detriment from unauthorised players in the market. The risk is such that the FSA ought to take steps to inform consumers of the risks of dealing with unauthorised players and the steps they can take to protect themselves.

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

We welcome the application of the approved person provisions to the full regime. We welcome the fact that firms operating in the Sale and Rent Back market will need to be directly authorised and there will be no appointed representatives.

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

It is important that the FSA monitors the marketplace for unauthorised business. Consumers engaging in such contracts are likely to be vulnerable and there is significant opportunity for the unscrupulous. That the OFT estimated that there would be 1000 firms in the market, yet only 80 firms have sought FSA authorisation suggests that there may be many unauthorised providers in the marketplace with the risk that they are exploiting vulnerable consumers.

The FSA states that it has a dedicated unauthorised business enforcement team who will take action against these unauthorised operators. We would like to seek the FSA's assurance that unauthorised operators are being identified and appropriate action is being taken. We would also like to see the FSA take proactive steps to inform consumers of the action they should take on being sold such a product.

Q10: Do you agree with our proposal to apply the SYSC 6 requirements in relation to financial crime and money laundering rules?

As there is clearly scope for money laundering, particularly where firms are acting on behalf of so called 'armchair investors' , we welcome the application of the money laundering rules to this sector.

Q11: Do you have any comments on our proposed TC requirements for those undertaking SRB activities?

Given the risks to consumers which might arise from mis-selling or mis-buying these products, we would like to see sales advisers in this marketplace be required to have the same standards of competence as those which apply to the equity release market.

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

We believe that the risks which might arise from sales of these products would highlight the need for more intrusive supervision than that of small firms more generally. This said, the discrepancy between the number of firms said to be operating in the marketplace and those that are authorised would suggest that directing resource to identify unauthorised firms in the market would do more to protect consumers.

Q16: Do you agree with the proposal to require firms to obtain insurance or an agreement with a credit institution to protect consumers in the event that they are not able to meet future obligations that they have to consumers under the terms of the SRB product?

It is important that firms are required to have sufficient capital and PII cover to ensure that the consumer is covered in the event of default or to compensate in case of detriment.

Q18: Do you agree with our approach to financial promotions and communications?

We welcome the robust approach to regulating financial promotions. As the OFT study showed, some SRB firms can put considerable pressure on consumers at a time when they are in debt and very vulnerable. There is a clear case for strong regulation of the financial promotions regime in this area and we welcome the FSA's application of detailed rules to protect consumers.

Q19: Do you agree that there should be an affordability and appropriateness test across all sales?

We agree with the FSA that the advised/non-advised distinction is inappropriate in this market, given the scope for consumer detriment. To avoid the risk that firms might exploit the non-advised channel to minimise their regulatory responsibilities, we welcome the single sales standard across all sales.

Q20: Do you have any comments on how firms should be required to assess affordability?

We agree that any assessment of affordability must be based on the consumer's income and expenditure and the income which might accrue from the sale should not be included in the assessment.

The degree to which this route is appropriate is dependent on many factors and it must be clear that this is the most appropriate course for the consumer. Firms should be required to explore all alternative options in order to ensure that sale and rent back is appropriate.

Q21: Do you agree with our proposals for all firms to provide a factsheet to consumers as part of the sales process?

Q22: Do you have any comments on the proposed content of the factsheet?

We welcome the inclusion of the FSA fact sheet in the sales process, in order that the consumer has access to clear and objective information.

However the factsheet must be clear and easily understood and we look forward to seeing the factsheet in due course.

Q23: Do you agree with our proposals to introduce a cooling-off period?

Q24: Do you agree that the cooling-off period should be 14 days? How long do you think the cooling-off period should be?

Q25: Do you have any comments on the cooling-off process?

We believe that a 14 day cooling off period is too short. This is a significant decision for consumers and it is not equivalent to an agreement under the consumer credit act. We would like to see the cooling off period extended to 28 days.

Q26: Do you agree that our approach to 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?

Q27: Do you agree with our proposal for the valuer to owe a duty of care to the consumer as well as the firm?

We welcome the proposal that the valuer has a duty of care to the consumer. The consumer in these circumstances is unlikely to have the resources to commission an alternative valuation. We wish to be satisfied that this is achievable and legally enforceable. We look forward to receiving reassurance from the FSA that this is the case.

Q28: Do you agree with our initial disclosure proposals?

SRB agreements are likely to be complex and it is crucial that the consumer understands the agreement into which they are entering. Full disclosure must be given at the outset so that the consumer understands what they will be paying and what the firm will be taking by way of fees.

Q29: Do you agree with our proposals regarding a key terms statement?

We welcome the key terms statement. It must set out clearly what the consumer can come to expect from engaging in the agreement so that they can make a considered choice about whether it is in their interest.

We believe that the FSA will need to be vigilant with firms to ensure that such key terms statements are fit for purpose and are presented in a sufficiently clear way.

Q30: Do you agree with our proposals for offer stage disclosure?

At the final stage it is important that consumers have a final opportunity to withdraw from any agreement. Firms should be satisfied that consumers understand the implications of the agreement and that the product is suitable for the consumer.

Q31: Do you agree with our proposals not to implement a post sale disclosure regime?

As the consumer detriment will take place during the sales and advice process rather than post-sale we support the regulatory obligations being imposed during the selling process rather than post-sale.

Q33: 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?

We believe that the regime must provide security of tenure for consumers. An assured tenancy is a mechanism for achieving this

Q34: Do you agree with our proposal to apply a rule on excessive charges?

Yes.

Q35: Do you have any comments about our approach to record keeping?

It is important that firms maintain good and appropriate records which show that the action taken is suitable for the consumer.

Q37: Do you agree with our proposal to apply DISP complaints reporting rules to SRB firms?

Yes we agree.

Q39: Do you agree with our proposals to include advisers and arrangers within the scope of the FSCS?

Yes. Consumers require recourse to compensation in the event of failure.

Q40: Do you agree that providers and administrators should not be brought into the scope?

Q41: Do you agree with our proposals to address the risks of provider default?

We agree that provided the tenancy is protected, the consumer should not be made vulnerable in the event of failure on the part of the lender. We therefore welcome the FSA's actions to improve security of tenure for these consumers.

Q42: Do you agree that the FOS should extend the scope of its voluntary jurisdiction to include SRB activities and operation of multilateral trading facilities?

Yes