

# Consultation response

**Ref: 2509**

## Financial Services Authority CP 09/06 Regulating sale and rent back: an interim regime

May 2009

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The Office of Fair Trading's (OFT) report into the sale and rent back market in October 2008 showed that the potential for serious consumer detriment is unlikely to be addressed through the existing framework of consumer protection. The Government accepted the OFT's recommendation that Financial Services Authority (FSA) regulation should be extended to cover sale and rent back agreements. The FSA is now consulting on how it intends to implement this proposal. It proposes a two-stage approach: an interim regime to be brought in as soon as the necessary legislation comes into force this summer (likely to 1 July 2009), to be followed by a full regime which is likely to be implemented in the second quarter of 2010.

# Key points and recommendations

- Age Concern and Help the Aged strongly welcomes the Government's proposal to extend FSA regulation to sale and rent back schemes, and FSA's proposals to introduce an interim regime as soon as possible.
- We urge FSA and the OFT to monitor those 'lifetime lease' schemes that would not fall within the proposed definition of 'sale and rent back', in case undesirable practices emerge in that market.
- We recommend that FSA devotes extra resource to policing the regulatory boundary in order to pick up firms who continue operating illegally once the regime is in force, as well as to ongoing supervision of firms with interim authorisation.
- In order to ensure that charges are not excessive and customers are treated fairly, we recommend that firms should be required to report (or at least maintain records of) property valuations and purchase prices of properties.
- The disclosure rules should ensure that consumers are made aware of their ability to choose their own valuer, the availability of independent benefits advice, and the existence of any ancillary costs and charges.
- We are concerned that interim-authorized firms will not be covered by the Financial Services Compensation Scheme. We recommend that FSA looks at other short-term options in addition to status disclosure, such as the possibility of requiring firms to post a bond or put some insurance in place.

# 1. Regulating sale and rent back

Age Concern and Help the Aged strongly welcomes the Government's proposal to extend FSA regulation to sale and rent back schemes, and FSA's proposals to introduce an interim regime as soon as possible. The proposals are a proportionate response to the severe risk of consumer detriment exposed by the OFT report.

The regulation of sale and rent back schemes is a particular concern for us as older people who are led to consider sale and rent back out of desperation may in fact have alternative solutions, including claiming means-tested benefits and buying a regulated equity release scheme. Without regulation, we think it is highly unlikely that older people will be made aware of all the options that are available.

We particularly welcome the steps that FSA is taking to get an interim regime up and running as soon as possible and urge HM Treasury and FSA to move with all possible speed. In the meantime, we recommend that

We have the following specific aims:

- Deterring the unprincipled from entering this market
- Reducing excessive charges, including the sale of the home at an unfairly low price
- Reducing the risk of loss of the home
- Ensuring that those who have other options are aware of the alternatives.

We have the following comments to make on the details of FSA's proposals. We have no comments on the questions not covered below.

## 2. FSA's proposals

**Q1: Are there any other forms of sale and rent back (existing or planned) not captured here?**

**Q2: Are there any other business models in the SRB market?**

We note that there is also a market in 'lifetime lease' schemes. These are a property transaction where the individual sells their existing home on the open market, chooses a new property which is bought by the scheme provider, and then buys a lifetime lease on the new property from the provider. The sale of the old property and the purchase of the lifetime lease are not connected transactions, and they do not fall within the proposed definition of 'sale and rent back' schemes. However there may be a commercial relationship between the estate agent selling the old property and the lease provider, to whom the estate agent refers clients.

Such schemes could be a useful option for older homeowners who need to move to a more suitable property. However, there is a risk that as they will be left outside the regulatory net intermediaries will have an incentive to sell them where equity release might be more suitable. It is also possible that fraudsters may seek to exploit this position by buying the original property at an undervalue through an intermediary.

We hope that this will not happen but in the meantime believe that FSA and OFT should monitor this market.

**Q3: Do you agree with our proposal to create a bespoke regulatory regime for SRB?**

**Q4: Do you agree that the risks of the proposed interim regulatory approach are outweighed by the benefits of putting in place consumer protections as quickly as possible?**

Yes. It is vital that swift action is taken, as many homeowners are under financial pressure. However, to forestall problems it is equally vital that FSA devotes extra resource to monitoring in order to pick up firms who continue operating illegally once the regime is in force, as well as to ongoing supervision of firms with interim authorisation.

**Q7: Do you have any comments on the proposed status disclosure requirements?**

We support the proposal to require firms to make it clear whether or not they are covered by the compensation scheme.

**Q8: Do you have any comments on the proposed reporting requirements?**

This is a market where we cannot rely on competition to ensure that consumers are receiving a fair price for their properties. In order to ensure that charges are not excessive, firms should also be required to report (or at least maintain records of) property valuations and purchase prices of properties.

**Q9: Do you have any comments on our proposed approach to supervision of SRB firms?**

As stated in response to Q4, we would expect FSA to devote extra resources to monitoring in order to deter unauthorised firms, in liaison with the OFT and local Trading Standards.

**Q12: Do you agree with our proposals to apply the Training and Competence sourcebook to:**

- a) advising on SRB agreements; and**
  - b) overseeing non-advised sales of such agreements on a day-to-day basis**
- but without imposing the appropriate examination requirements?**

**Q13: Do you agree with our proposals to apply only the high-level competence requirements to all other activities carried on by SRB firms?**

Yes, in the interests of speed. However, in the full regime FSA should consider requiring advisers in this market to have the equity release examination requirements.

**Q14: Do you agree with our proposal to apply the MCOB guidance on high-pressure sales?**

**Q15: Do you agree with our proposal to apply rules requiring firms to protect consumers' interests?**

We strongly support these proposals.

**Q16: Do you agree with our proposal to apply a rule requiring independent valuation?**

Yes. However, the FSA definition of independence could still cover a valuer put forward by the firm. We accept that individuals in this market may not be in a position to seek their own valuer, but we note that choosing your own valuer could be a very important protection. It is important that firms make it clear that individuals have a choice and that they are not put under time pressure as a way of deterring them from choosing their own valuer. We would expect FSA to carry out some monitoring of firms buying at very low valuations.

**Q17: Do you agree with our proposal to apply a rule on beneficial interest to safeguard consumers?**

**Q18: Do you agree with our proposal to apply rules relating to financial promotions and communications?**

**Q19: Do you agree with our proposal to apply a rule on excessive charges?**

We strongly support these proposals.

**Q20: Do you agree with our proposal to apply a bespoke conduct of business rule on pre-sale disclosure for the interim regulatory regime?**

Yes. We place particular importance on the following:

- Valuations - although we accept that many consumers considering sale and rent back will not be in a position to pay for an extra valuation, it is extremely important that they are told that they do have the right to choose their own valuer,
- Access to benefits advice – we recommend that FSA should require providers to refer to the availability of independent benefits advice.
- Ancillary costs and fees - the disclosure rules should make it clear that consumers should be told about any ancillary costs and fees.

We also have some concerns about the limited period for which firms will be required to keep records of disclosure. Five years is not a long time. Firms should be required to keep records for longer, or told that if they fail to keep records for longer it will be assumed that no disclosure has been made.

**Q21. Do you agree with our proposal to apply most of our DISP rules to SRB firms?**

**Q22. Do you agree with our proposal to bring SRB firms into the compulsory jurisdiction of the FOS?**

We strongly support these proposals.

**Q23: Do you agree with our proposal to not bring SRB firms with an interim permission into the scope of the FSCS?**

**Q24: Do you agree with our proposal that, for firms which have an interim VoP for SRB, the scope of the FSCS should apply only for advisers and arrangers, and not for providers and administrators?**

We are concerned that sale and rent back firms will not be covered by the compensation scheme until the full authorisation process is up and running. Although they will be covered by the Financial Ombudsman Service, there is no protection if the scheme provider becomes insolvent. This involves considerable risk to tenants who could lose their home, and places great weight on status disclosure to ensure that tenants know the risks they are running and on regulators to ensure that any firms do not default in the meantime.

We can appreciate that FSA is reluctant to require the rest of the financial services industry to bail out insolvent firms until a full authorisation process is in place. We hope, however, that FSA will look at other short-term options in addition to status disclosure, such as the possibility of requiring firms to post a bond.

Age Concern England (charity number 261794) has merged with Help the Aged (charity number 272786) to form Age UK, a charitable company limited by guarantee and registered in England: registered office address 207-221 Pentonville Road, London, N1 9UZ, company number 6825798, registered charity number 1128267. Age Concern and Help the Aged are brands of Age UK. The three national Age Concerns in Scotland, Northern Ireland and Wales have also merged with Help the Aged in these nations to form three registered charities: Age Scotland, Age Northern Ireland, Age Cymru.