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Dear David

Guidance consultation: FSA sale and rent back review 2011

This is the Financial Services Consumer Panel's response to the FSA's sale and rent back (SRB) guidance consultation. As the consultation only outlines the findings of the FSA's thematic review of the SRB market, and does not include any specific new guidance for firms, we find it difficult to take exception to what is being presented without conducting a separate in-depth analysis of this sector ourselves. Without the resources to do this we have instead, therefore, outlined some broad observations and concerns about the FSA's approach to regulating this market in our response.

The Panel welcomes the FSA's intervention in the sale and rent back market to identify and mitigate poor practices among regulated firms. As the detailed findings of the review highlight, firms have failed to meet the most basic standards required by FSA rules. This has undoubtedly led to consumer detriment for vulnerable members of society.

However, we are not convinced that the market for new regulated SRB schemes has been halted as is suggested in the consultation. A quick internet search for '*sale and rent back*' shows that there are a number of firms advertising for new business. Although some of these firms are intermediaries acting on behalf of unnamed providers, there is at least one SRB provider open for new business that is promoting the fact it is an FSA authorised firm.

The Panel is also concerned that there is an active unauthorised SRB market operating on the perimeter of the FSA's regulations. The OFT's 2008 review of this market concluded that at the time there were upwards of 1,000 (and up to 8,000) firms, together with an unknown number of non-professional landlords, that had conducted about 50,000 transactions.¹ We are not convinced that, since the FSA's full regulatory regime began shortly after in June 2010, the number of firms writing this business has fallen to just 22.

¹ Office of Fair Trading, *Sale and rent back: An OFT market study*, October 2008 see http://oft.gov.uk/shared_oft/reports/consumer_protection/oft1018.pdf

The Panel recognises the challenges the FSA faces in monitoring both the behaviour of small authorised firms and identifying unauthorised businesses, particularly where these operate at a local level only. However, this is becoming an increasingly important discipline following the Government's decision to transfer responsibility for regulating consumer credit to the new FCA. We believe the FSA could, and should, do more to target firms that are writing SRB business without the appropriate permissions. This is a significant area of potential consumer detriment, as customers of these firms will not benefit from the protection afforded by FSA rules and guidance.

The Panel suggests there is a wide range of potential ways to tackle the risks created by unregulated SRB providers. This includes working closely with local trading standards officers, Citizen Advice Bureaux and other sources of free money advice to identify firms that might be operating without the appropriate permissions. There is also significant benefit in ensuring all consumers appreciate the need to check that the firm they are dealing with is authorised, and where they suspect they are not, reporting this to the FSA. The FSA should certainly consider how best to communicate its concerns more directly to consumers. Some form of consumer alert may be beneficial to potential SRB customers, especially those unaware of the pitfalls they face in this market.

Obviously, the proposals being suggested for the SRB market by the FSA's Mortgage Market Review (MMR), in particular the requirement that all SRB sales are advised, will to a degree help the more vulnerable consumers better understand whether entering this market really is sensible. Nevertheless, we firmly believe the publication of the thematic review should not signal the end of the FSA's focus on the SRB sector. Given the potential for consumer detriment, we encourage the FSA to prioritise action against firms operating without correct permissions and closely monitor the activities of all firms with authorisation to write new SRB business. Should this further investigation reveal continued widespread and endemic malpractice persists we would strongly urge the FSA to consider deployment of its product intervention powers to ban the sale of all SRB schemes, and enforce with zero tolerance.

Yours sincerely,

Adam Phillips
Chairman